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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92062543
Party	Plaintiff Mombacho Cigars S.A.
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Date	06/28/2016
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4,183,397

MOMBACHO CIGARS S.A.,

Petitioner,

v.

TROPICAL TOBACCO, INC.,

Respondent.

Cancellation No. 92062543

**PETITIONER'S MOTION TO COMPEL
RESPONDENT'S RESPONSES TO PETITIONER'S DISCOVERY REQUESTS
AND MOTION FOR EXTENSION OF THE DISCOVERY AND TRIAL PERIODS**

Petitioner, Mombacho Cigars S.A., in accordance with Section 523 of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), 37 CFR § 2.120(e), submits this motion for an order compelling Respondent, Tropical Tobacco, Inc. ("Respondent" or "Tropical") to answer interrogatories in response to Petitioners' First Set of Interrogatories, which was served on March 29, 2016, a copy of which are annexed hereto to the Declaration of Peter S. Sloane ("Sloane Decl.") as Exhibit A. Tropical's response and supplemental response are attached to the Sloane Decl. as Exhibits B-C.

Petitioner, further, in accordance with Sections 403.04, 509.01 and 509.01(a) of the TBMP, submits this motion for an order extending the closing dates of the discovery and trial periods by two months. Petitioner respectfully requests that any extension of the discovery period apply only to discovery sought by Petitioner. Respondent has refused to grant consent to any extension of the discovery and trial periods.

I. PRELIMINARY STATEMENT

Since March 2016, Petitioner has attempted to obtain complete discovery responses from Tropical. Tropical has delayed, provided vague responses, and obstructed Petitioner from finding out basic information that is relevant to the case. Although this trademark cancellation proceeding relates to Tropical's abandonment of the MOMBACHO mark for its cigars, Tropical refuses to provide the details of how it first sold these products to customers, who its past distributors, wholesalers or retailers were, and the geographic regions in which it has allegedly sold these products. With discovery closing in less than two weeks, an extension of the discovery period is necessary so that Petitioner can obtain these relevant facts, seek follow-up discovery, and use this information in the upcoming depositions of Tropical's employees and third parties. Besides failing to provide responsive information, Tropical also delayed in disclosing numerous pertinent facts. After a lengthy deficiency letter, Tropical provided these additional details in the middle of June, with less than a month of discovery left. Tropical's failure to provide this information in a timely manner prejudiced Petitioner's ability to follow-up on these facts within the discovery period. Despite its failure to cooperate in good faith, Tropical now refuses to consent to an extension of the discovery and trial periods. Accordingly, Petitioner requests that the Board grant its motion to compel, extend its discovery period by two months, and reschedule the trial periods accordingly.

II. STATEMENT OF FACTS

A. Procedural History

Tropical claims ownership of Registration No. 4,183,397 ("the '397 Registration") for the trademark MOMBACHO for cigars. On October 22, 2015, Petitioner petitioned to cancel the '397 Registration under Section 14(c) of the Lanham Trademark Act of 1946, 15 U.S.C. §

1064(c) based on Tropical's abandonment of the mark. Tropical answered the petition on November 2, 2015, denying that it abandoned the mark and alleging that it "is using the mark in interstate commerce."

Discovery opened in the matter on January 10, 2016. The parties exchanged Initial Disclosures in February of 2016. Discovery is set to close on July 8, 2016. No extensions of the discovery and trial dates have been sought to date.

B. Respondent's Refusal to Comply with the Discovery Requests

On March 29, 2016, Petitioner propounded its first set of discovery requests on Tropical. These discovery requests included 25 interrogatories and 25 document requests. (Sloane Decl. at Ex. A.) Tropical served its initial responses to these discovery requests on April 27, 2016. (Sloane Decl. at Ex. B.)

Because Tropical's responses were deficient, Petitioner wrote to Tropical on May 28, 2016 and requested a timely supplement by June 6, 2016. (Sloane Decl. at Ex. D.) The letter complained of Tropical's responses to numerous requests and failure to include a signed verification. Rather than responding by June 6th, Tropical's counsel indicated that Tropical would serve a supplement by the middle of June. (Sloane Decl. at Ex. E.) Petitioner received Tropical's supplemental responses via first-class mail on June 16, 2016. (Sloane Decl. at Ex. C.) These supplemental responses did not provide any indication of which interrogatories were supplemented. When Petitioner asked for clarification, Tropical's counsel responded that it "modified the answers to the interrogatories that [Petitioner] objected to and added the verifications." (Sloane Decl. at Ex. E.) Petitioner then pointed out to Tropical that other information was added to the supplemental responses, such as its alleged promotion of its

product at a trade show, and again asked for Tropical to identify what changes were made in the supplement. (Sloane Decl. at Ex. E.) Tropical has failed to respond to this request.

On June 22, 2016, Petitioner served its second set of interrogatories and document requests, seeking follow-up information from Tropical's prior discovery responses. Tropical's responses to this second set of discovery requests are not due until after the current close of discovery.

After reviewing Tropical's supplemental responses in detail and finding them again inadequate, Petitioner requested that Tropical consent to an extension of the discovery period for two months. (Sloane Decl. at Ex. F.) Petitioner sought the extension of the discovery period so that it could obtain proper answers to its discovery requests prior to taking the depositions of Tropical's employees and any third parties. Tropical refused to consent to any extension. (Sloane Decl. at Ex. F.) The depositions of Tropical's witnesses in Miami are currently set for July 7, 2016 and July 8, 2016, which is at the close of discovery. Petitioner has also subpoenaed Tropical's current distributor, Serious Cigars, LLC. The deposition of Serious Cigars, LLC in Houston is set for July 6th.

III. ARGUMENT

Fed. R. Civ. P. 33 and TBMP Section 405.01 allow a party to serve interrogatories upon any other party during the discovery period in an *inter partes* proceeding before the Board. In accordance with these rules, Petitioner served its first set of interrogatories on Tropical on March 29, 2016. Now three months later, after receiving two responses and conferring with Tropical's counsel on several occasions, Tropical's responses are still deficient. Discovery is set to close in under two weeks. Tropical's delay in providing proper responses to Petitioner has prejudiced it and hindered its ability to seek follow-up discovery.

A. Tropical's Responses to Interrogatory Nos. 10, 18 and 19 Are Incomplete

A motion to compel is appropriate where, as here, a party fails to produce information requested pursuant to a timely-served interrogatory. *See* Fed. R. Civ. P. 37; TBMP Section 523.01, 37 C.F.R. § 2.120(e). Petitioner has been attempting for months to get certain basic information from Tropical relating to its alleged sales and distribution of its MOMBACHO cigars. This information is highly relevant to this cancellation action, which is based on Tropical's abandonment of the MOMBACHO mark. Tropical's discovery responses thus far have been vague and incomplete. Even after a lengthy deficiency letter, Tropical still failed to properly respond to a number of interrogatories. Interrogatory Nos. 10, 18 and 19 are the subject of the present motion, and are reproduced below with Tropical's responses and supplemental responses:

Interrogatory No. 10:

Describe the circumstances under which Respondent's MOMBACHO cigars were first sold or distributed in the U.S.

Response to Interrogatory No. 10:

The products were first sold to consumers directly.

Supplemental Response to Interrogatory No. 10:

The products were first sold to consumers directly through retailers. The product is presently being sold by Serious Cigars, LLC of 6608 Cypress Creek Parkway, Houston, TX 77069.

Interrogatory No. 18:

Identify each and every distributor, wholesaler and retailer in the U.S. who has ever purchased MOMBACHO cigars from Respondent.

Response to Interrogatory No. 18:

The question is objected to as being vague and overbroad. Serious Cigars, LLC of 6608 Cypress Creek Parkway, Houston, TX 77069 is a representative current retailer of the brand.

Supplemental Response to Interrogatory No. 18:

The question is objected to as being vague and overbroad. Serious Cigars, LLC of 6608 Cypress Creek Parkway, Houston, TX 77069 is a representative current retailer of the brand. No detailed records were kept.

Interrogatory No. 19:

Identify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars.

Response to Interrogatory No. 19:

Entire U.S.A.

Supplemental Response to Interrogatory No. 19:

Entire U.S.A. (Texas, Florida, New York, New Jersey)

Interrogatory No. 10 seeks information about Tropical's first sales of cigars under the MOMBACHO mark. Rather than responding with specific information about the circumstances of these sales, such as the customer name, retailer name, volume sold, or nature of the sale (promotional, online, in-store, etc.), Tropical vaguely responded that it first sold directly to consumers through retailers, and identifies its current distributor. This response provides Petitioner with virtually no information about Tropical's *first sales*, though.

Similarly, Interrogatory No. 18 seeks information about the distributors, wholesalers and retailers who have purportedly purchased Tropical's MOMBACHO cigars. Such a request is neither vague nor overbroad, as this information is highly relevant as to whether Tropical abandoned the MOMBACHO mark. Tropical's supplemental response claims that "no detailed records were kept." Such a response is suspect considering that Tropical was able to provide annual sales numbers and volumes. (*See* Sloane Decl. at Ex. C, Tropical's Response to Interrogatory No. 12.) Presumably the source of its sales information would also include information about the distributors, retailers, or wholesalers who bought the goods. Yet, the *only* third-party identified is its *current* retailer. In any event, Tropical is not asking for specific records in this request and thus it is irrelevant that "no detailed records were kept" by Tropical. Tropical was affirmatively obligated to investigate and determine whether it had information in its possession that was responsive to this interrogatory. Such an investigation would include, at a

minimum, asking its employees whether they remember using any particular retailer, wholesaler, or distributor. Based on the initial and supplemental interrogatory responses, no such investigation appears to have been conducted. Indeed, the verification for the interrogatories was signed by Tropical's counsel of record, not a corporate officer or employee with personal knowledge of the facts. (See Sloane Decl. at Ex. C, Verification Page.) Petitioner subpoenaed Tropical's current retailer, Serious Cigars, and may also desire to subpoena Tropical's past retailers, distributors or wholesalers, particularly those third-parties that may have worked with Tropical during the period of abandonment should Tropical ultimately identify those past retailers during the course of discovery.

Finally, Interrogatory No. 19 asks Tropical to identify the geographic regions in which it has ever sold or distributed its MOMBACHO cigars. It vaguely responded "Entire U.S.A. (Texas, Florida, New York, New Jersey)." It is unclear whether the sales and distribution were only limited to the four states referenced. Clarification of this response has been repeatedly requested and Petitioner has served follow-up discovery to try to obtain it, however, Tropical continues to resist good faith cooperation.

In light of the above, Petitioner requests that its motion to compel be granted with respect to Interrogatory Nos. 10, 18 and 19. Petitioner is prejudiced by Tropical's failure to provide this information and to the extent this motion is granted, Petitioner is requesting an extension of its discovery period so that it can pursue discovery on these issues as well as any other issues that may arise based on Tropical's discovery misconduct.

B. An Extension of the Discovery and Trial Periods is Justified Based on Tropical's Delay in Providing Responsive Information

TBMP Section 403.04 provides that "[t]he closing date of the discovery period may be extended by stipulation of the parties approved by the Board, or on motion (pursuant to Fed. R.

Civ. P. 6(b)) granted by the Board.” The Section further provides that “a party which receives discovery requests early in the discovery period may not, by delaying its response thereto, or by responding improperly so that its adversary is forced to file a motion to compel discovery, deprive its adversary of the opportunity to take ‘follow-up’ discovery. Such a delay or improper response constitutes good cause for an extension of the discovery period.”

As discussed above, Tropical’s failure to properly respond to Petitioner’s interrogatories necessitates an extension of Petitioner’s opportunity to take discovery. In addition, other relevant information which was properly sought in Petitioner’s March discovery requests, was not provided until mid-June in Tropical’s supplemental responses. Based on this new information, Petitioner has sought follow-up discovery. Any new discovery requests would not be answered until after discovery closes, and thus this information could not be used during the scheduled depositions of Tropical’s employees and retailer. Tropical’s failure to provide this information in a timely manner constitutes good cause for the requested extension.

Such information includes, among other things, the sales numbers for the number of MOMBACHO cigars sold in the United States from 2004 to present, which was requested in Interrogatory No. 12. Given the wholesale price of \$60-\$80/box identified in response to Interrogatory No. 13 and the number of boxes listed as being sold per year in response to Interrogatory No. 12, these sales numbers are highly suspicious. For example, the supplemental response to Interrogatory 12 lists 2 boxes being sold in 2014, yielding \$231. This would suggest that each box was sold for around \$115, which contradicts the \$60-\$80 pricing information provided. Similarly, the numbers for 2016 show exactly 300 boxes have sold totaling \$10,500, which suggests a price of \$35 per box, again contradicting the \$60-\$80 pricing information previously provided. Indeed, both the box and sales numbers for 2016 were not provided until

Tropical's supplemental response in mid-June. Obviously, supplemental responses are expected to *reduce* the inconsistencies, contradictions, and non-responses of initial discovery responses, but Tropical's supplemental responses here had the opposite effect. Indeed, even though Petitioner's document requests asked for documents to support these sales numbers, Tropical indicated that it did not have any. Such admission, when coupled with its supplemental responses, further undermines the integrity of its revised sales data.

Moreover, Tropical amended its response to Interrogatory No. 13 to include a range of prices in which it has sold its MOMBACHO cigars, which was not previously disclosed.

Tropical also amended its response to Interrogatory No. 14, which sought information about "each and every different way that [Tropical] has ever advertised, marked and promoted MOMBACHO cigars in the U.S." to include the IPCPR, which is the retail tobacco dealers' annual convention. This information was not previously disclosed to Petitioner and is relevant to whether Tropical abandoned the MOMBACHO mark.

Interrogatory No. 15 was amended to identify specific websites, industry magazines, and industry blogs that Tropical supposedly used to advertise, market, and promote its MOMBACHO cigars in the United States. Similarly, Tropical amended Interrogatory No. 23 to identify another internet website that it used to "advertise, market, promote and sell its MOMBACHO cigars in the U.S." Even though all of the above information was requested and available to Tropical in March, *none* of it was provided in Tropical's initial responses, when Petitioner could have used such disclosures to timely seek third-party discovery.

Finally, Tropical amended its response to Interrogatory No. 24 to identify a rating's range of '88-'92 by Cigar Aficionado magazine, rather than just the '92 rating in its original response. Its supplemental response also included a copy of the ratings, which shows that the ratings are all

from 2006 — a time period prior to its alleged abandonment of the MOMBACHO mark. As with the other disclosures cataloged above, this information was *not* supplied to Petitioner until the middle of June, precluding it from having sufficient time to seek additional discovery.

Thus, Tropical's delay in providing this information is good cause for an extension of the discovery and trial periods. See TBMP Section 509.01(a); *Miss America Pageant v. Petite Productions, Inc.*, 1990 WL 354560, at *4 (T.T.A.B. Aug. 14, 1990) (“[T]he parties should note that the Board will, upon motion, reopen or extend discovery solely for the benefit of a party whose opponent, by wrongfully refusing to answer, or delaying its responses to, discovery, has unfairly deprived the propounding party of the right to take follow-up”); *Neville Chemical Co. v. Lubrizol Corp.*, 1975 WL 20772, at *2 (T.T.A.B. Ja. 29, 1975) (“had opposer timely answered the interrogatories rather than filing objections to all of them, applicant would have had sufficient time to take discovery depositions, based on opposer's answers to the interrogatories, prior to the date then set for the close of the discovery period. However, opposer's objections to the interrogatories substantially delayed applicant's receipt of the information sought therein, thus denying to applicant the opportunity to take discovery depositions based upon such information.”).

IV. STATEMENT OF COMPLIANCE WITH TBMP 523.02 AND RULE 2.120(E)

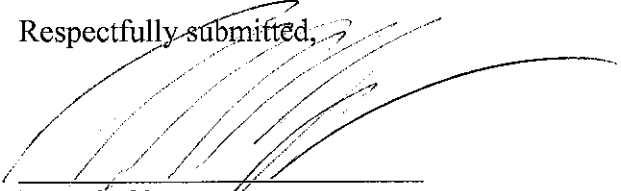
Pursuant to TBMP Section 523.02, 37 C.F.R. § 2.120(e), Petitioner made a good faith effort to resolve with Respondent the issues presented in this motion to compel by correspondence and conversations with Respondent's counsel. Copies of correspondence evidencing Petitioner's efforts are attached to the Sloane Decl. as Exhibits D-F.

V. CONCLUSION

For the reasons set forth above, Petitioners respectfully request that the Board grant the instant motion in all respects, including ordering Respondent to provide complete responses to Interrogatory Nos. 10, 18 and 19, and extending the discovery and trial periods by two months. Petitioner requests that any extension granted with respect to the discovery period only apply to discovery sought by Petitioner in light of Respondent's failure to timely provide responsive information. Petitioners further respectfully request that the Board suspend this proceeding pending resolution of this motion pursuant to TBMP Section 523.01, 37 C.F.R. § 2.120(e)(2).

Date: June 28, 2016
White Plains, New York

Respectfully submitted,



Peter S. Sloane
Cameron Reuber
Lauren Sabol

LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Tel.: (914) 288-0022

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **PETITIONER'S MOTION TO COMPEL RESPONDENT'S RESPONSES TO PETITIONER'S DISCOVERY REQUESTS AND MOTION FOR EXTENSION OF THE DISCOVERY AND TRIAL PERIODS** was served upon counsel for Respondent, this 28th day of June 2016, by First-Class mail, postage prepaid, addressed as follows:

Stewart L. Gitler, Esq.
WELSH FLAXMAN & GITLER LLC
200 Duke Street, Suite 100
Alexandria, VA 22314
gitler@iplawsolutions.com

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', written over a horizontal line.

Peter S. Sloane

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 4,183,397

MOMBACHO CIGARS S.A.,

Petitioner,

v.

TROPICAL TOBACCO, INC.,

Respondent.

Cancellation No. 92062543

**DECLARATION OF PETER S. SLOANE IN SUPPORT
OF PETITIONER'S MOTION TO COMPEL RESPONDENT'S
RESPONSES TO PETITIONER'S DISCOVERY REQUESTS AND
MOTION FOR EXTENSION OF THE DISCOVERY AND TRIAL PERIODS**

I, PETER S. SLOANE, hereby declare and state as follows:

1. I am a Partner in Leason Ellis LLP, attorneys for Petitioner Mombacho Cigars S.A. I submit this Declaration in support of Petitioner's Motion to Compel Respondent's Responses to Petitioner's Discovery Requests and Motion for Extension of the Discovery and Trial Periods. The facts stated herein are within my personal knowledge and are true to the best of my knowledge and belief.

2. Attached hereto as Exhibit A is a true and correct copy of Petitioner's First Set of Interrogatories to Respondent and Petitioner's First Set of Requests to Respondent for Production of Documents and Things, dated March 29, 2016.

3. Attached hereto as Exhibit B is a true and correct copy of Respondent's Response to Petitioner's First Set of Interrogatories to Respondent and Respondent's Response to

Petitioner's First Set of Requests for Production of Documents and Things, dated April 27, 2016.

4. Attached hereto as Exhibit C is a true and correct copy of Respondent's Second Response to Petitioner's First Set of Interrogatories to Respondent and Respondent's Second Response to Petitioner's First Set of Requests for Production of Documents and Things, dated June 13, 2016.

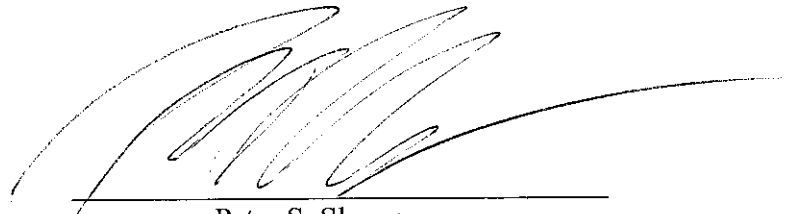
5. Attached hereto as Exhibit D is a true and correct copy of the May 28, 2016 letter from me to Stewart Gitler.

6. Attached hereto as Exhibit E is a true and correct copy of the May 28 to June 23, 2016 e-mail chain between me and Stewart Gitler.

7. Attached hereto as Exhibit F is a true and correct copy of the May 28 to June 24, 2016 e-mail chain between me and Stewart Gitler.

I hereby declare under penalty of perjury that the forgoing is true and correct to the best of my knowledge and belief.

Date: June 28, 2016
White Plains, New York

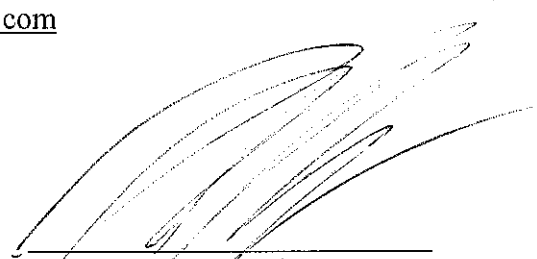


Peter S. Sloane

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **DECLARATION OF PETER S. SLOANE IN SUPPORT OF PETITIONER'S MOTION TO COMPEL RESPONDENT'S RESPONSES TO PETITIONER'S DISCOVERY REQUESTS AND MOTION FOR EXTENSION OF THE DISCOVERY AND TRIAL PERIODS** with Exhibits A through F was served upon counsel for Respondent, this 28th day of June, 2016, by First-Class mail, postage prepaid, addressed as follows:

Stewart L. Gitler, Esq.
WELSH FLAXMAN & GITLER LLC
200 Duke Street, Suite 100
Alexandria, VA 22314
gitler@iplawsolutions.com



Peter S. Sloane

Exhibit A

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRIAL AND TRADEMARK APPEAL BOARD**

----- x
MOMBACHO CIGARS S.A., :

Petitioner, :

-against- :

TROPICAL TOBACCO, INC., :

Respondent. :

Cancellation No. 92062543

Registration No. 4,183,397

----- x
PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Petitioner, Mombacho Cigars S.A., by and through its attorneys, Leason Ellis LLP, requests that Respondent, Tropical Tobacco Inc. ("Respondent" or "Tropical Tobacco") answer the following interrogatories separately and fully in writing under oath within thirty (30) days after service hereof.

These interrogatories shall be deemed continuing and it is requested that Respondent serve upon Petitioner supplemental answers as required by Rule 26(e) of the Federal Rules of Civil Procedure.

For the convenience of the Board and counsel, it is requested that each interrogatory be set forth immediately preceding the answer thereto.

DEFINITIONS

A. As used herein, the term "Petitioner" shall mean and refer to Mombacho Cigars S.A., the petitioner in the above-captioned administrative proceeding.

B. As used herein, the term "Respondent" shall mean and refer not only to Tropical Tobacco, the respondent in the above-captioned administrative proceeding, but also to its

predecessors, if any, and/or persons controlling or controlled by Tropical Tobacco, including but not limited to, its parents, subsidiaries, partners, joint venturers and each of their officers, directors, employees, agents, representatives, and attorneys, to the fullest extent the context permits.

C. As used herein, the term "MOMBACHO" shall mean and refer to the mark MOMBACHO, which is the subject of U.S. Registration No. 4,183,397, and any name or mark consisting of or comprising the term "MOMBACHO" in whole or in part.

D. As used herein "commerce" shall mean commerce regulated by the United States Congress.

E. As used herein, the term "document" is defined to be synonymous in meaning and equal in scope to the usage of that term in Rule 34(a) of the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of that term. Document includes the original and all copies which are different from the original (whether by interlineation, receipt stamp, notation, indication of copy sent or received or otherwise), regardless of location, including all handwritten, typed, printed, photographed, recorded, transcribed, punched, taped, filmed or graphic matter, including any means of recording upon any tangible thing, any form of communication or representation, including without limitation: communications, including intra-agency communications; correspondence; directives; memoranda (including pencil jottings, diary entries, desk calendar entries, reported recollections and any other written form of notation of events or intentions); transcripts and recordings of conversations and telephone calls; books and records; reports; work sheets and work papers and all other documentary material of any nature whatsoever, together with any attachments thereto

or enclosures therewith, now in the possession, custody or control of Respondent or any attorney, employee, agent or any representative of Respondent.

F. As used herein, the terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

G. As used herein, the term “referring” shall mean concerning, relating to, pertaining to, describing, reflecting, constituting and/or evidencing, whether directly or indirectly.

H. The use of the singular form of any word includes the plural, and the use of the plural includes the singular.

I. The following interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Respondent acquires or which becomes known to Respondent up to and including the time of trial shall be furnished to Petitioner immediately after such information is first acquired or becomes known.

J. When referring to a person, “to identify” means to give, to the extent known, the person’s full name, present or last known address, telephone number and email address, and when referring to a natural person, additionally, the present or last known place of employment. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

K. When referring to documents, “to identify” means to give, to the extent known, the (i) type of document; (ii) general subject matter of the document; (iii) date of the document; and (iv) author(s), addressee(s) and recipient(s). In the alternative, the responding party may

produce the documents, together with identifying information sufficient to satisfy Fed. R. Civ. P. 33(d).

INTERROGATORIES

INTERROGATORY NO. 1

Describe the business of Respondent and identify all names under which it has ever done business.

INTERROGATORY NO. 2

Identify the address of each and every office and business facility of Respondent in the U.S. and outside the U.S.

INTERROGATORY NO. 3

Identify all current owners of Respondent.

INTERROGATORY NO. 4

Identify all current officers and employees of Respondent and indicate their titles and positions.

INTERROGATORY NO. 5

Identify the person or persons involved in Respondent's selection and adoption of the mark MOMBACHO for cigars.

INTERROGATORY NO. 6

Describe whether the term "MOMBACHO" has any meaning or significance.

INTERROGATORY NO. 7

Identify each different type and brand of cigar ever sold or distributed by Respondent under the mark MOMBACHO in the U.S.

INTERROGATORY NO. 8

Identify all countries from which the tobacco and tobacco seeds used for Respondent's MOMBACHO cigars have originated.

INTERROGATORY NO. 9

Identify the date when Respondent first used the mark MOMBACHO for cigars in both commerce and intrastate commerce.

INTERROGATORY NO. 10

Describe the circumstances under which Respondent's MOMBACHO cigars were first sold or distributed in the U.S.

INTERROGATORY NO. 11

Identify all the different ways in which Respondent has ever boxed, packaged or sold its MOMBACHO cigars in the U.S.

INTERROGATORY NO. 12

Identify Respondent's total sales of MOMBACHO cigars in the U.S., by dollars and units, for each year from 2004 to the present date.

INTERROGATORY NO. 13

Identify the price or prices at which Respondent has sold MOMBACHO cigars in the U.S. for each year from 2004 to the present date.

INTERROGATORY NO. 14

Identify each and every different way that Respondent has ever advertised, marketed and promoted its MOMBACHO cigars in the U.S.

INTERROGATORY NO. 15

Identify all materials ever used by Respondent to advertise, market and promote its MOMBACHO cigars in the U.S.

INTERROGATORY NO. 16

Identify the total amount of money spent by Respondent in advertising, marketing and promoting its MOMBACHO cigars in the U.S. by year from 2004 to the present date.

INTERROGATORY NO. 17

Identify any years when Respondent has not sold MOMBACHO cigars in the U.S.

INTERROGATORY NO. 18

Identify each and every distributor, wholesaler and retailer in the U.S. who has ever purchased MOMBACHO cigars from Respondent.

INTERROGATORY NO. 19

Identify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars.

INTERROGATORY NO. 20

Identify Respondent's inventory of MOMBACHO cigars as of October 22, 2015.

INTERROGATORY NO. 21

Identify all ring labels, box labels and other labels ever used by Respondent for its MOMBACHO cigars.

INTERROGATORY NO. 22

Identify all changes made to the website at www.casadefernandez.com since October 22, 2015.

INTERROGATORY NO. 23

Identify the addresses of all internet websites ever used by Respondent to advertise, market, promote and sell its MOMBACHO cigars in the U.S.

INTERROGATORY NO. 24

Identify all ratings and awards ever received by or for Respondent's MOMBACHO cigars.

INTERROGATORY NO. 25

Identify all contracts, agreements, consents, undertakings, assignments or licenses referring or relating to the mark MOMBACHO.

INTERROGATORY NO. 26

Identify each and every document and tangible thing referred to in the categories identified in section B of Respondent's Rule 26(a)(1) Initial Disclosures.

INTERROGATORY NO. 27

Identify the person or persons most knowledgeable about the facts as alleged in the Respondent's Answer to Petitioner's Petition for Cancellation.

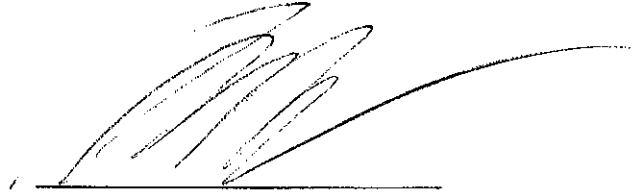
INTERROGATORY NO. 28

Identify all witnesses whose testimony Respondent intends or expects to rely on at trial in this proceeding.

INTERROGATORY NO. 29

Identify all person(s) who provided information in response to any Interrogatory served by Petitioner in this matter and, for each person identified, identify the corresponding interrogatory and list the responsive information provided by the person.

Dated: March 29, 2016
White Plains, New York

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', written over a horizontal line.

Peter S. Sloane

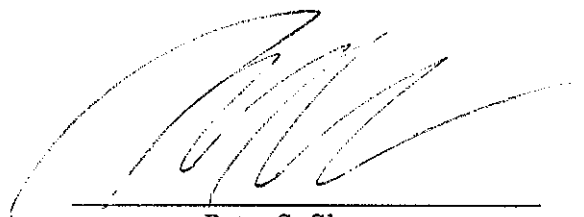
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Phone: (914) 288-0022
Fax: (914) 288-0023
Email: sloane@leasonellis.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing **PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT** was served upon counsel for Respondent, this 29th day of March, 2016, by First-Class mail, postage prepaid, addressed as follows:

Stewart L. Gitler, Esq.
Welsh Flaxman & Gitler LLC
2000 Duke Street, Suite 100
Alexandria, Virginia 22314

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', is written over a horizontal line.

Peter S. Sloane

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRIAL AND TRADEMARK APPEAL BOARD**

----- x

MOMBACHO CIGARS S.A.,	:	
	:	
<i>Petitioner,</i>	:	
-against-	:	Cancellation No. 92062543
	:	Registration No. 4,183,397
TROPICAL TOBACCO, INC.,	:	
	:	
<i>Respondent.</i>	:	

----- x

**PETITIONER'S FIRST SET OF REQUESTS TO RESPONDENT
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Petitioner, Mombacho Cigars S.A., by and through its attorneys, Leason Ellis LLP, requests that Respondent, Tropical Tobacco Inc. ("Respondent" or "Tropical Tobacco") produce the documents and things requested below for inspection and copying at the offices of counsel for Petitioner, Leason Ellis LLP, at One Barker Avenue, Fifth Floor, White Plains, New York 10601, attn: Peter S. Sloane, Esq., or at such other place as agreed to by the parties, within thirty (30) days from the date of service of these requests.

DEFINITIONS

A. As used herein, the term "Petitioner" shall mean and refer to Mombacho Cigars S.A., the petitioner in the above-captioned administrative proceeding.

B. As used herein, the term "Respondent" shall mean and refer not only to Tropical Tobacco, the respondent in the above-captioned administrative proceeding, but also to its predecessors, if any, and/or persons controlling or controlled by Tropical Tobacco, including but not limited to, its parents, subsidiaries, partners, joint venturers and each of their officers,

directors, employees, agents, representatives, and attorneys, to the fullest extent the context permits.

C. As used herein, the term “MOMBACHO” shall mean and refer to the mark MOMBACHO, which is the subject of U.S. Registration No. 4,183,397 (the “Registration”), and any name or mark consisting of or comprising the term “MOMBACHO” in whole or in part.

D. As used herein, the term “commerce” shall mean commerce regulated by the United States Congress.

E. As used herein, the term “document” is defined to be synonymous in meaning and equal in scope to the usage of that term in Rule 34(a) of the Federal Rules of Civil Procedure. A draft or non-identical copy is a separate document within the meaning of that term. Document includes the original and all copies which are different from the original (whether by interlineation, receipt stamp, notation, indication of copy sent or received or otherwise), regardless of location, including all handwritten, typed, printed, photographed, recorded, transcribed, punched, taped, filmed or graphic matter, including any means of recording upon any tangible thing, any form of communication or representation, including without limitation: communications, including intra-agency communications; correspondence; directives; memoranda (including pencil jottings, diary entries, desk calendar entries, reported recollections and any other written form of notation of events or intentions); technical logs, mock-ups, source code and accompanying documentation, transcripts and recordings of conversations and telephone calls; books and records; reports; work sheets and work papers and all other documentary material of any nature whatsoever, together with any attachments thereto or enclosures therewith, now in the possession, custody or control of Respondent or any attorney, employee, agent or any representative of Respondent.

F. As used herein, the terms “and” and “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

G. As used herein, the term “referring” shall mean concerning, relating to, pertaining to, describing, reflecting, constituting and/or evidencing, whether directly or indirectly.

H. The use of the singular form of any word includes the plural, and the use of the plural includes the singular.

I. For each document requested herein which is sought to be withheld under a claim of privilege, or other objection, provide the following information:

- (a) identify the nature of the privilege, e.g., work product, which is being claimed;

- (b) the place, approximate date, and manner of recordation or preparation of the document;

- (c) the name and title of the sender, and the name and title of each recipient of the document;

- (d) the name of each person or persons (other than stenographic or clerical assistants) who participated in the preparation of the document;

- (e) the name and corporate position of each person to whom the contents of the document have heretofore been disclosed or communicated by copy, exhibition, reading or substantial summarization;

- (f) a statement of the basis upon which the claim of privilege is asserted and whether or not the subject matter of the contents of the document is limited to legal advice or information provided for the purpose of securing legal advice;

- (g) the number of the Request herein to which the document is responsive;

(h) the identity and corporate position of the person or persons supplying the Respondent's attorney with the information in subsections (b) through (f) above; and

(i) a brief description of the subject matter of the contents of the document.

J. If any document requested herein was formerly in Respondent's possession, custody, or control and has been lost or destroyed, or otherwise disposed of, Respondent is requested to submit in lieu of any such document a written statement:

(a) describing in detail the nature of the document and its contents;

(b) identifying the person(s) who prepared or authored the document and, if applicable, the person(s) to whom the document was sent, whether indicated thereon or by blind copies;

(c) specifying the date on which the document was prepared or transmitted; and

(d) specifying, if possible, the date on which the document was lost or destroyed and, if destroyed, the conditions of and reasons for such destruction and the persons requesting and performing the destruction.

K. If any document relates in any manner to a meeting or to any other conversation, all participants in the meeting or conversation are to be identified.

L. This request for documents is a continuing one and any document obtained subsequent to production which would have been produced had it been available or its existence been known at the time of production specified herein is to be supplied forthwith.

M. Respondent shall produce such documents either as they are kept in the usual course of business or shall organize and label them to correspond with the numbered Document Requests.

DOCUMENTS AND THINGS REQUESTED

REQUEST NO. 1

All documents and things referring or relating to Respondent's selection and adoption of the mark MOMBACHO for cigars.

REQUEST NO. 2

Documents and things sufficient to identify each different type and brand of MOMBACHO cigar ever sold or distributed by Respondent in the U.S.

REQUEST NO. 3

All documents and things referring or relating to Respondent's first use of the mark MOMBACHO for cigars in U.S. commerce and in intrastate commerce.

REQUEST NO. 4

All documents and things referring or relating to Respondent's current use of the mark MOMBACHO for cigars in the U.S.

REQUEST NO. 5

Documents and things sufficient to identify all the different ways in which Respondent has ever boxed, packaged or sold its MOMBACHO cigars in the U.S.

REQUEST NO. 6

Documents and things sufficient to identify Respondent's total annual sales of MOMBACHO cigars in the U.S., by dollars and units, for each year from 2004 to the present date.

REQUEST NO. 7

Documents and things sufficient to identify the price or prices at which Respondent has sold MOMBACHO cigars in the U.S. for each year from 2004 to the present date.

REQUEST NO. 8

Documents and things sufficient to identify each and every different medium in which Respondent has ever advertised, marketed or promoted its MOMBACHO cigars in the U.S.

REQUEST NO. 9

Examples of all materials and things ever used by Respondent to advertise, market and promote its MOMBACHO cigars in the U.S.

REQUEST NO. 10

Documents and things sufficient to identify the total amount of money spent by Respondent in advertising, marketing or promoting its MOMBACHO cigars in the U.S. for each year from 2004 to the present date.

REQUEST NO. 11

All documents and things referring or relating to any years when Respondent did not sell MOMBACHO cigars in the U.S.

REQUEST NO. 12

Documents and things sufficient to identify all distributors, wholesalers and retailers in the U.S. that ever purchased MOMBACHO cigars from Respondent.

REQUEST NO. 13

Documents and things sufficient to identify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars.

REQUEST NO. 14

All documents and things referring or relating to Respondent's inventory of MOMBACHO cigars as of October 22, 2015.

REQUEST NO. 15

Examples of each different kind of ring label, box label and other label ever used by Respondent for its MOMBACHO cigars.

REQUEST NO. 16

All documents and things referring or relating to each and every change made to the website at www.casadefernandez.com since October 22, 2015.

REQUEST NO. 17

Printouts of all internet web pages ever used by Respondent to advertise, market, promote and sell its MOMBACHO cigars in the U.S.

REQUEST NO. 18

Documents and things sufficient to identify all ratings and awards ever received by or for Respondent's MOMBACHO cigars.

REQUEST NO. 19

All contracts, agreements, consents, undertakings, assignments or licenses referring or relating to the mark MOMBACHO.

REQUEST NO. 20

All marketing and business plans for Respondent's MOMBACHO cigars from 2004 to the present date.

REQUEST NO. 21

All documents and things referring or relating to the decision to file, and the filing of, the application that matured into the Registration.

REQUEST NO. 22

All documents and things referring or relating to Petitioner.

REQUEST NO. 23

Each and every document and tangible thing referred to in the categories identified in section B of Respondent's Rule 26(a)(1) Initial Disclosures.


REQUEST NO. 24

All documents and things, other than those produced in response to the foregoing Requests, on which Respondent intends to rely in connection with this proceeding.

REQUEST NO. 25

All documents and things not otherwise produced in response to any of the foregoing requests which are identified in Respondent's Responses to Petitioner's First Set of Interrogatories to Respondent which are served simultaneously herewith (and/or which were relied upon in preparing Respondent's interrogatory responses).

Dated: March 29, 2016
White Plains, New York



Peter S. Sloane

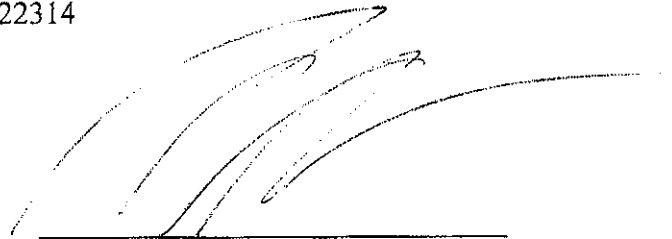
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Phone: (914) 288-0022
Fax: (914) 288-0023
Email: sloane@leasonellis.com

Attorneys for Petitioner

CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing **PETITIONER'S FIRST SET OF REQUESTS TO RESPONDENT FOR PRODUCTION OF DOCUMENTS AND THINGS** was served upon counsel for Respondent, this 29th day of March, 2016, by First-Class mail, postage prepaid, addressed as follows:

Stewart L. Gitler, Esq.
Welsh Flaxman & Gitler LLC
2000 Duke Street, Suite 100
Alexandria, Virginia 22314

A handwritten signature in dark ink, consisting of several sweeping, fluid strokes, positioned above a horizontal line.

Peter S. Sloane

Exhibit B

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No.: 4,183,397

Mark: MOMBACHO

Registered: July 31, 2012

MOMBACHO CIGARS S.A.

Petitioner,

v.

TROPICAL TOBACCO, INC.,

Respondent.

)
)
)
)
)
)
) Cancellation No. 92062543
)
)
)
)
)

RESPONDENT'S RESPONSE TO PETITIONER'S FIRST SET OF
INTERROGATORIES TO RESPONDENT

Respondent, TROPICAL TOBACCO, INC. (hereinafter, "Tropical"), hereby answers the following First Set of Interrogatories which were served by Petitioner on Respondent under Rule 33 of the Federal Rules of Civil Procedure.

To the best of Respondent's knowledge, information and belief, formed after reasonable inquiry, its responses are complete and correct as of the time they are made. Respondent reserves the right to amend and/or supplement its responses as pertinent facts become known in the future, as contemplated by FRCP 26(e).

GENERAL OBJECTIONS

1. Respondent objects to the definitions and instructions accompanying these Interrogatories to the extent that they seek to impose obligations beyond those established under the Federal Rules of Civil Procedure. Respondent responds to these Interrogatories giving each term its usual, customary, and ordinary meaning, and in accordance with the scope of discovery mandated by the Federal Rules of Civil Procedure.
2. Respondent further objects to Petitioner's Interrogatories to the extent that they are inconsistent with or purport to impose any obligation on Respondent that is not imposed by the Federal Rules of Civil Procedure.
3. Respondent objects to each of the Interrogatories to the extent that they seek information protected by the attorney-client privilege, work-product privilege, the party communications privilege, and/or the consulting-expert privilege, and asserts such privileges and exemptions as contemplated under the Federal Rules. Information responsive to those Interrogatories may be withheld under the basis of the privilege. Respondent further objects to these Interrogatories to the extent that the information may be protected under any other statutory or common law privilege.
4. Respondent objects to these Interrogatories to the extent that they require Respondent to marshal its evidence and to the extent that they require a legal conclusion.
5. Respondent objects to these Interrogatories to the extent that they seek to impose an obligation on Respondent to provide information not subject to its possession, custody or control. Specifically,

Respondent objects to each Interrogatory which seeks information from persons, entities, and/or other parties other than the party upon which these Interrogatories were served.

6. Respondent objects to the Interrogatories to the extent that they purport to require discovery which falls outside the scope of permissible discovery under the Federal Rules of Civil Procedure and to the extent that they purport to require the discovery of information not reasonably calculated to lead to the discovery of admissible evidence, or because they are unduly burdensome and/or because such information is obtainable from more convenient, less burdensome, and less expensive sources pursuant to Federal Rule of Civil Procedure 26(b).

7. The responses reflect Respondent's best present knowledge based on its review and investigation of the facts to date. Respondent has not done any independent investigation of any third party use or registration of any mark for purposes of responding to these Requests and responds solely based on its present knowledge. Respondent's review and investigation is continuing and Respondent reserves the right to amend and supplement these answers, pursuant to the Federal Rules of Civil Procedure, as additional information or documents may warrant.

8. Each of the foregoing general objections is hereby incorporated by reference into the following answers as if fully set forth in each such specific answer, and specific reference to the general objections in one or more answers is not a waiver of such general objections with respect to answers that do not include such a specific reference. Notwithstanding the specific answer to any of Respondent's Interrogatories, Respondent does not waive any of the general objections made herein. Further, each of the above general objections is asserted as to each Interrogatory.

ANSWERS

INTERROGATORY NO. 1

Describe the business of Respondent and identify all names under which it has ever done business.

ANSWER NO.1

1. Tropical Tobacco Inc. dba Tabacalera Tropical also dba Casa Fernandez

INTERROGATORY NO. 2

Identify the address of each and every office and business facility of Respondent in the U.S. and outside the U.S.

ANSWER NO. 2

2. 310 NW 79th Avenue
Miami, Florida 33122

INTERROGATORY NO. 3

Identify all current owners of Respondent.

ANSWER NO. 3

3. GOBLET HOLDINGS KFT LLC
1036 Budapest, Becsi Ut 52.
Hungary

INTERROGATORY NO. 4

Identify all current officers and employees of Respondent and indicate their titles and positions.

ANSWER NO. 4

4. Paul Palmer, President
Josefa Vega, Manager

INTERROGATORY NO. 5

Identify the person or persons involved in Respondent's selection and adoption of the mark MOMBACHO for cigars.

ANSWER NO. 5

5. Paul Palmer

INTERROGATORY NO. 6

Describe whether the term "MOMBACHO" has any meaning or significance.

ANSWER NO. 6

6. The term refers to an inactive volcano in Nicaragua

INTERROGATORY NO. 7

Identify each different type and brand of cigar ever sold or distributed by Respondent under the mark MOMBACHO in the U.S.

ANSWER NO. 7

7. The mark refers to a single cigar brand

INTERROGATORY NO. 8

Identify all the countries from which tobacco and tobacco seeds used for Respondent's MOMBACHO cigars have originated..ANSWER NO. 8

8. Tobacco from Nicaragua

INTERROGATORY NO. 9

Identify the date when Respondent first used the mark MOMBACHO for cigars in both commerce and interstate commerce.

ANSWER NO. 9

9. January 2004

INTERROGATORY NO. 10

Describe the circumstances under which Respondent's MOMBACHO cigars were first sold or distributed in the U.S.

ANSWER NO. 10

10. The products were first sold to consumers directly

INTERROGATORY NO. 11

Identify all the different ways in which Respondent has ever boxed, packaged or sold its MOMBACHO cigars in the U.S.

ANSWER NO. 11

11. The products are sold in boxes

INTERROGATORY NO. 12

Identify Respondent's total sales of MOMBACHO cigars in the U.S., by dollars and units, for each year from 2004 to the present date.

ANSWER NO. 12

	<u>Year</u>	<u>Boxes sold</u>
12.	2004	100
	2005	255
	2006	766
	2007	321
	2008	71
	2009	88
	2010	103
	2011	75
	2012	6
	2013	5
	2014	2
	2015	28

Dollars of cigars sold is confidential and Respondent believes such information is beyond the scope of the proceeding.

INTERROGATORY NO. 13

Identify the price or prices at which Respondent has sold MOMBACHO cigars in the U.S. for each year from 2004 to date.

ANSWER NO .13

13. Wholesale price is \$60.00/box

INTERROGATORY NO. 14

Identify each and every different way that Respondent has ever advertised, marketed and promoted MOMBACHO cigars in the U.S.

ANSWER NO. 14

14. Websites, industry magazines and industry blogs

INTERROGATORY NO. 15

Identify all materials ever used by respondent to advertise, market and promote MOMBACHO cigars in the U.S.

ANSWER NO. 15

15. Websites, industry magazines and industry blogs

INTERROGATORY NO. 16

Identify the amount of money spent by Respondent in advertising, marketing and promoting its MOMBACHO cigars in the U.S. by year from 2004 to present date.

ANSWER NO. 16

16. The product is marketed with other brands and it is impossible to separate the cost

INTERROGATORY NO. 17

Identify any years when Respondent has not sold MOMBACHO cigars in the U.S.

ANSWER NO. 17

17. None

INTERROGATORY NO. 18

Identify each and every distributor, wholesaler and retailer in the U.S. who has ever purchased MOMBACHO cigars from Respondent.

ANSWER NO. 18

18. The question is objected to as being vague and overbroad. Serious Cigars, LLC of 6608 Cypress Creek Parkway, Houston, TX 77069 is a representative current retailer of the brand

INTERROGATORY NO. 19

Identify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars.

ANSWER NO. 19

19. Entire U.S.A.

INTERROGATORY NO. 20

Identify Respondent's inventory of MOMBACHO cigars as of October 22, 2015.

ANSWER NO. 20

20. 300 boxes

INTERROGATORY NO. 21

Identify all ring labels, box labels and other labels ever used by Respondent for its MOMBACHO cigars.

ANSWER NO. 21

21. See attached Exhibit A

INTERROGATORY NO. 22

Identify all changes made to the website at www.casadefernandez.com since October 22, 2015.

ANSWER NO. 22

22. None

INTERROGATORY NO. 23

Identify the addresses of all internet websites ever used by Respondent to advertise, market, promote and sell its MOMBACHO cigars in the U.S.

ANSWER NO. 23

23. www.casadefernandez.com (at times)

INTERROGATORY NO. 24

Identify all ratings and awards ever received by or for Respondent's MOMBACHO cigars.

ANSWER NO. 24

24. Rated '92 by Cigar Aficionado magazine

INTERROGATORY NO. 25

Identify all contracts, agreements, consents, undertakings, assignments or licenses referring or relating to the mark MOMBACHO

ANSWER NO. 25

25. None

INTERROGATORY NO. 26

Identify each and every document and tangible thing referred to in the categories identified in section B of Respondent's Rule 26(a)(1) Initial Disclosures.

ANSWER NO. 26

26. Exhibit A labels

Exhibit B Half Wheel article

INTERROGATORY NO. 27

Identify the person or persons most knowledgeable about the facts alleged in Respondent's Answer to Petitioner's Petition for Cancellation.

ANSWER NO. 27

27. Paul Palmer
310 NW 79th Avenue
Miami, Florida 33122

INTERROGATORY NO. 28

Identify all witnesses whose testimony Respondent intends or expects to rely on at trial in this proceeding.

ANSWER NO. 28

28. Paul Palmer
310 NW 79th Avenue
Miami, Florida 33122

INTERROGATORY NO. 29

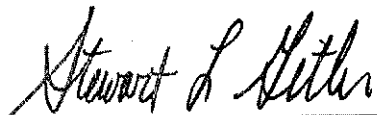
Identify all person(s) who provided information in response to any Interrogatory served by Petitioner in this matter and, for each person identified, identify the corresponding interrogatory and list the responsive information provided by the person.

ANSWER NO. 29

29. Paul Palmer
310 NW 79th Avenue
Miami, Florida 33122

Respondent reserves the right to rely on any documents disclosed by Petitioner during discovery and any additional documents that might be located during discovery. Respondent also reserves the right to supplement these disclosures as other documents become relevant based on Petitioner's initial and subsequent disclosures and discovery responses and/or any documents or information that are developed or revealed as discovery continues in this matter.

Respectfully submitted,

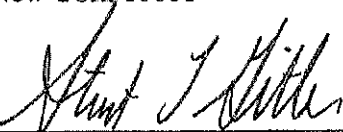
By: 
Stewart L. Gitler
Howard N. Flaxman John L. Welsh
WELSH FLAXMAN & GITLER LLC
2000 Duke Street, Suite 100
(703)920-1122
mail@iplawsolutions.com
ATTORNEYS FOR RESPONDENT

Date: 4/27/16

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing RESPONDENT'S RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT, was served on Counsel for Petitioner, by U.S. first-class mail, postage prepaid, 4/27, 2016, to:

Peter S. Sloane
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601

By: 
Stewart L. Gitler

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No.: 4,183,397

Mark: MOMBACHO

Registered: July 31, 2012

MOMBACHO CIGARS S.A.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92062543
)	
TROPICAL TOBACCO, INC.,)	
)	
Respondent.)	

**RESPONDENT'S RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Respondent, TROPICAL TOBACCO, INC. (hereinafter, "Tropical"), hereby answers the following First Set of Requests to Respondent for Production of Documents and Things which were served by Petitioner on Respondent under Rule 34 of the Federal Rules of Civil Procedure.

To the best of Respondent's knowledge, information and belief, formed after reasonable inquiry, its responses are complete and correct as of the time they are made. Respondent reserves the right to amend and/or supplement its responses as pertinent facts become known in the future, as contemplated by FRCP 26(e).

REQUEST NO. 1

All documents and things referring or relating to Respondent's selection and adoption of the mark MOMBACHO for cigars.

ANSWER TO REQUEST NO. 1

None

REQUEST NO. 2

Documents and things sufficient to identify each different type and brand of MOMBACHO cigar ever sold or distributed by Respondent in the U.S.

ANSWER TO REQUEST NO. 2

None

REQUEST NO. 3

All documents and things referring or relating to Respondent's first use of the mark MOMBACHO for cigars in U.S. commerce and interstate commerce.

ANSWER TO REQUEST NO. 3

None

REQUEST NO. 4

All documents and things referring or relating to Respondent's current use of the mark MOMBACHO for cigars.

ANSWER TO REQUEST NO. 4

See Exhibits A and B

REQUEST NO. 5

Documents and things sufficient to identify all the different ways in which Respondent's current use of the mark MOMBACHO for cigars in the U.S.

ANSWER TO REQUEST NO. 5

None

REQUEST NO. 6

Documents and things sufficient to identify Respondent's total annual sales of MOMBACHO cigars in the U.S., by dollars and units, for each year from 2004 to the present date.

ANSWER TO REQUEST NO. 6

None

REQUEST NO. 7

Documents and things sufficient to identify the price or prices at which Respondent has sold MOMBACHO cigars in the U.S. for each year from 2004 to the present date.

ANSWER TO REQUEST NO. 7

None

REQUEST NO. 8

Documents and things sufficient to identify each and every different medium in which Respondent has ever advertised, marketed or promoted its MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 8

None

REQUEST NO. 9

Examples of all materials and things ever used by Respondent to advertise, market and promote its MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 9

None

REQUEST NO. 10

Documents and things sufficient to identify all the total amount of money spent in

advertising, marketing or promoting its MOMBACHO cigars in the U.S. for each years from 2004 to the present date.

ANSWER TO REQUEST NO. 10

None

REQUEST NO. 11

All documents and things referring or relating to any years when Respondent did not sell MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 11

None

REQUEST NO. 12

Documents and things sufficient to identify all distributors, wholesalers and retailers in the U.S. that ever purchased MOMBACHO cigars from Respondent

ANSWER TO REQUEST NO. 12

None

REQUEST NO. 13

Documents and things sufficient to identify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars

ANSWER TO REQUEST NO. 13

None

REQUEST NO. 14

All documents and things referring or relating to Respondent's inventory of MOMBACHO cigars as of October 22, 2015

ANSWER TO REQUEST NO. 14

None

REQUEST NO. 15

Examples of each different kind of ring label, box label and other label ever used by Respondent for its MOMBACHO cigars

ANSWER TO REQUEST NO. 15

See Exhibit A

REQUEST NO. 16

All documents and things referring or relating to each and every change made to the website at www.casadefernandez.com since October 22, 2015

ANSWER TO REQUEST NO. 16

None

REQUEST NO. 17

Printouts of internet webpages ever used by Respondent to advertise, market, promote and sell its MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 17

None

REQUEST NO. 18

Documents and things sufficient to identify all ratings and awards ever received by or for Respondent's MOMBACHO cigars

ANSWER TO REQUEST NO. 18

See Cigar Aficionado magazine's website for past ratings

REQUEST NO. 19

All contracts, agreements, consents, undertakings, assignments or licenses referring or relating to the mark MOMBACHO

ANSWER TO REQUEST NO. 19

None

REQUEST NO. 20

All marketing and business plans for Respondent's MOMBACHO cigars from 2004 to the present date

ANSWER TO REQUEST NO. 20

None

REQUEST NO. 21

All documents and things referring or relating to the decision to file, and the filing of, the application that matured into the Registration.

ANSWER TO REQUEST NO. 21

See www.uspto.gov for a copy of the application prosecution file

REQUEST NO. 22

All documents and things referring or relating to Petitioner.

ANSWER TO REQUEST NO. 22

None

REQUEST NO. 23

Each and every document and tangible thing referred to in the categories identified in Section B of Respondent's Rule 26(a)(1) Initial Disclosures.

ANSWER TO REQUEST NO. 23

None

REQUEST NO. 24

All documents and things, other than those produced in response to the foregoing Requests, on which Respondent intends to rely in connection with this proceeding.

ANSWER TO REQUEST NO. 24

Nothing known as of the date of this response.

REQUEST NO. 25

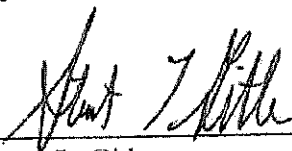
All documents and things not otherwise produced in response to any of the foregoing requests which are identified in Respondent's Responses to Petitioner's First Set of Interrogatories to Respondent which are served simultaneously herewith (and/or which were relied upon in preparing Respondent's interrogatory responses)

ANSWER TO REQUEST NO. 25

None known as of the date of this response.

Respondent reserves the right to rely on any documents disclosed by Petitioner during discovery and any additional documents that might be located during discovery. Respondent also reserves the right to supplement these disclosures as other documents become relevant based on Petitioner's initial and subsequent disclosures and discovery responses and/or any documents or information that are developed or revealed as discovery continues in this matter.

Respectfully submitted,

By: 

Stewart L. Gitler
Howard N. Flaxman
John L. Welsh
WELSH FLAXMAN & GITLER LLC
2000 Duke Street, Suite 100
(703) 920-1122
mail@iplawsolutions.com
ATTORNEYS FOR RESPONDENT

Date: 4/27/16

CERTIFICATE OF SERVICE

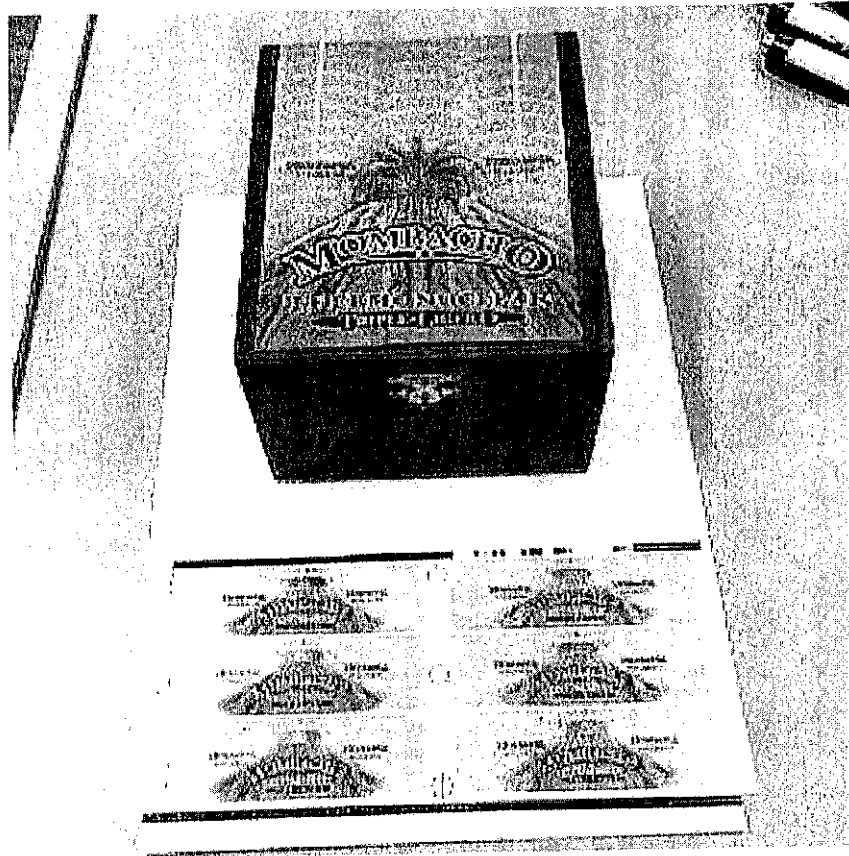
The undersigned certifies that a true and correct copy of the foregoing RESPONDENT'S, RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS was served on Counsel for Petitioner, by U.S. first-class mail, postage prepaid, 4/27, 2016, to:

Peter S. Sloane
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601

By:  _____

Stewart L. Gitler

EXHIBIT A



HALFWHEEL



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NEWS

MOMBACHO MIAMI BECOMES SERIOUS CIGARS EXCLUSIVE

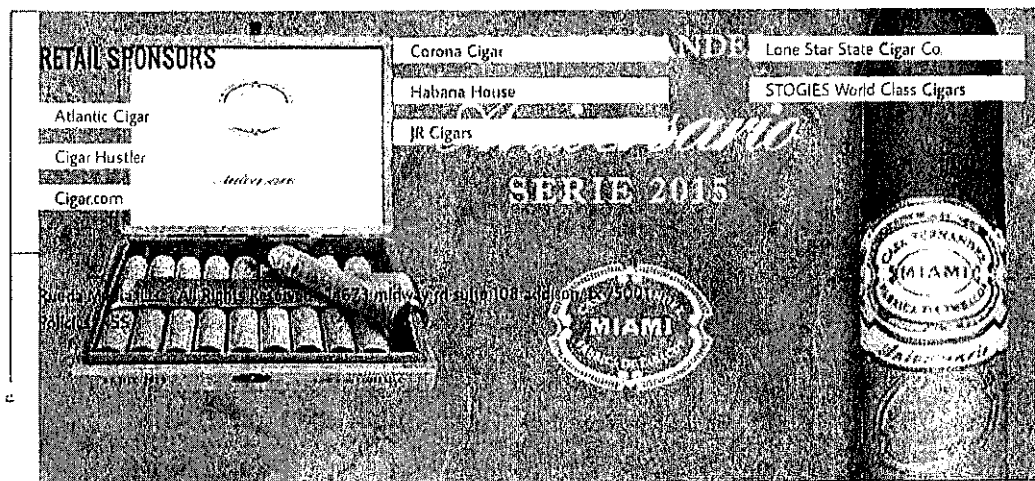
By Charlie Minato @charlieminato · On April 19, 2016

As has been mentioned in nearly every post on this website regarding Mombacho Cigars S.A., the company sells its cigars branded as Tierra Volcán in the U.S. because of a trademark issue.

You've likely heard of Mombacho, but probably not this Mombacho.

As has been mentioned in nearly every post on this website regarding Mombacho Cigars S.A., the company sells its cigars branded as Tierra Volcán in the U.S. because of a trademark issue.

EXHIBIT B

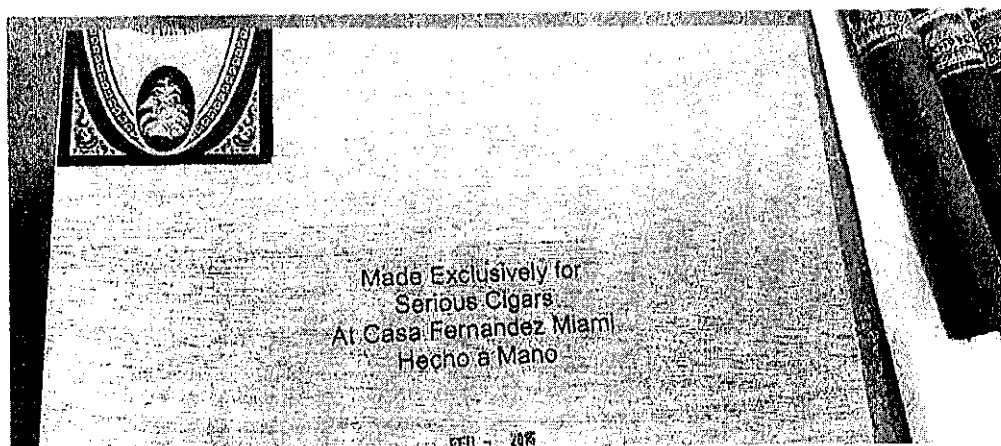


While it can sell cigars under the Mombacho name in every other country, in the U.S., only Casa Fernández can sell cigars called Mombacho.



The company, when it was previously known as Tabacalera Tropical, produced the cigar under the name Mombacho Thermomuclear Series 2006. Now that blend is back with a new name, new factory and new home.

The Mombacho Miami uses the same all Nicaraguan blend as the original cigar, but it is now being made at Casa Fernández Miami—instead of in Nicaragua—and is an exclusive to Serious Cigars of Houston, Texas.



TABAQUERO
-HAMLET PAREDES-



It's offered in three sizes: Belicoso (6 1/4 x 54, \$9.95), Corona Gorda (6 1/2 x 52, \$9.90) and Robusto (5 x 54, \$9.15). Each size is offered in boxes of 10, instead of the 15-count boxes the company used to use for Mombacho.

The cigars will go on sale Saturday at Serious Cigars' Texas Cigar Festival.



Mombacho Expanding With Tena Volcan Line (Update)
in "News"



Mombacho Cigars S.A. to Celebrate 10 Years with Magnifico
in "News"



Mombacho Cigars S.A. Ships Liga Maestro
in "News"



CASA FERNÁNDEZ | CASA FERNÁNDEZ MIAMI | MOMBACHO MIAMI | MOMBACHO | SERIOUS CIGARS | TEXAS CIGAR FESTIVAL (2016)

SHARE

Tweet

Like {17}


G+1 2



CHARLIE MINATO

I am an editor and co-founder of halfwheel.com/Rueda Media, LLC. I previously co-founded and published TheCigarFeed, one of the two predecessors of halfwheel. I handle the editing of our written content, the majority of the technical aspects of the site and work with the rest of our staff on content management, business development and more. I've lived in most corners of the country and now entering my second stint

in Dallas, Texas. I enjoy boxing, headphones, the Le Mans 24-hour, wearing sweatshirts year-round and gyros. echte liebe.

♥ Recommend  Share


Sort by Best ▾



user123456789 • 19 hours ago



Victor Nicolás Resek • 19 hours ago

A 52 RG as a corona gorda 

👍 0 • 🗨️ 0 • 📧 0




charlie • 17 hours ago

So is this a Mombacho (Tierra Volcan) brand or a Casa Fernandez brand?

👍 0 • 🗨️ 0 • 📧 0



Patrick Lagreid **Staff** →  [Moderate](#) • 7 hours ago

This is Casa Fernandez's; they have the rights to the word Mombacho in the United States and produced a line called Mombacho several years ago, which is now a store exclusive to Serious Cigars as mentioned above.

👍 0 • 🗨️ 0 • 📧 0

Exhibit C

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Trademark Registration No.: 4,183,397
Mark: MOMBACHO
Registered: July 31, 2012

_____)	
MOMBACHO CIGARS S.A.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92062543
)	
TROPICAL TOBACCO, INC.,)	
)	
Respondent.)	
_____)	

**RESPONDENT'S 2ND RESPONSE TO PETITIONER'S FIRST SET OF
INTERROGATORIES TO RESPONDENT**

Respondent, TROPICAL TOBACCO, INC. (hereinafter, "Tropical"), hereby answers the following First Set of Interrogatories which were served by Petitioner on Respondent under Rule 33 of the Federal Rules of Civil Procedure.

To the best of Respondent's knowledge, information and belief, formed after reasonable inquiry, its responses are complete and correct as of the time they are made. Respondent reserves the right to amend and/or supplement its responses as pertinent facts become known in the future, as contemplated by FRCP 26(e).

GENERAL OBJECTIONS

1. Respondent objects to the definitions and instructions accompanying these Interrogatories to the extent that they seek to impose obligations beyond those established under the Federal Rules of Civil Procedure. Respondent responds to these Interrogatories giving each term its usual, customary, and ordinary meaning, and in accordance with the scope of discovery mandated by the Federal Rules of Civil Procedure.
2. Respondent further objects to Petitioner's Interrogatories to the extent that they are inconsistent with or purport to impose any obligation on Respondent that is not imposed by the Federal Rules of Civil Procedure.
3. Respondent objects to each of the Interrogatories to the extent that they seek information protected by the attorney-client privilege, work-product privilege, the party communications privilege, and/or the consulting-expert privilege, and asserts such privileges and exemptions as contemplated under the Federal Rules. Information responsive to those Interrogatories may be withheld under the basis of the privilege. Respondent further objects to these Interrogatories to the extent that the information may be protected under any other statutory or common law privilege.
4. Respondent objects to these Interrogatories to the extent that they require Respondent to marshal its evidence and to the extent that they require a legal conclusion.
5. Respondent objects to these Interrogatories to the extent that they seek to impose an obligation on Respondent to provide information not subject to its possession, custody or control. Specifically,

Respondent objects to each Interrogatory which seeks information from persons, entities, and/or other parties other than the party upon which these Interrogatories were served.

6. Respondent objects to the Interrogatories to the extent that they purport to require discovery which falls outside the scope of permissible discovery under the Federal Rules of Civil Procedure and to the extent that they purport to require the discovery of information not reasonably calculated to lead to the discovery of admissible evidence, or because they are unduly burdensome and/or because such information is obtainable from more convenient, less burdensome, and less expensive sources pursuant to Federal Rule of Civil Procedure 26(b).

7. The responses reflect Respondent's best present knowledge based on its review and investigation of the facts to date. Respondent has not done any independent investigation of any third party use or registration of any mark for purposes of responding to these Requests and responds solely based on its present knowledge. Respondent's review and investigation is continuing and Respondent reserves the right to amend and supplement these answers, pursuant to the Federal Rules of Civil Procedure, as additional information or documents may warrant.

8. Each of the foregoing general objections is hereby incorporated by reference into the following answers as if fully set forth in each such specific answer, and specific reference to the general objections in one or more answers is not a waiver of such general objections with respect to answers that do not include such a specific reference. Notwithstanding the specific answer to any of Respondent's Interrogatories, Respondent does not waive any of the general objections made herein. Further, each of the above general objections is asserted as to each Interrogatory.

ANSWERS

INTERROGATORY NO. 1

Describe the business of Respondent and identify all names under which it has ever done business.

ANSWER NO.1

1. Tropical Tobacco Inc. dba Tabacalera Tropical also dba Casa Fernandez is a grower of tobacco, manufacturer of cigars and seller of cigars.

Tropical Tobacco Inc. dba Tabacalera Tropical also dba Casa Fernandez
310 NW 79th Avenue
Miami, Florida 33122

INTERROGATORY NO. 2

Identify the address of each and every office and business facility of Respondent in the U.S. and outside the U.S.

ANSWER NO. 2

2. 310 NW 79th Avenue
Miami, Florida 33122

INTERROGATORY NO. 3

Identify all current owners of Respondent.

ANSWER NO. 3

3. GOBLET HOLDINGS KFT LLC
1036 Budapest, Becsi Ut 52.
Hungary

INTERROGATORY NO. 4

Identify all current officers and employees of Respondent and indicate their titles and positions.

ANSWER NO. 4

4. Paul Palmer, President
Josefa Vega, Manager

INTERROGATORY NO. 5

Identify the person or persons involved in Respondent's selection and adoption of the mark MOMBACHO for cigars.

ANSWER NO. 5

5. Paul Palmer

INTERROGATORY NO. 6

Describe whether the term "MOMBACHO" has any meaning or significance.

ANSWER NO. 6

6. The term refers to an inactive volcano in Nicaragua

INTERROGATORY NO. 7

Identify each different type and brand of cigar ever sold or distributed by Respondent under the mark MOMBACHO in the U.S.

ANSWER NO. 7

7. The mark refers to a single cigar brand

INTERROGATORY NO. 8

Identify all the countries from which tobacco and tobacco seeds used for Respondent's MOMBACHO cigars have originated..ANSWER NO. 8

8. Tobacco from Nicaragua

INTERROGATORY NO. 9

Identify the date when Respondent first used the mark MOMBACHO for cigars in both commerce and interstate commerce.

ANSWER NO. 9

9. January 2004

INTERROGATORY NO. 10

Describe the circumstances under which Respondent's MOMBACHO cigars were first sold or distributed in the U.S.

ANSWER NO. 10

10. The products were first sold to consumers directly through retailers. The product is presently being sold by Serious Cigars, LLC of 6608 Cypress Creek Parkway, Houston, TX 77069.

INTERROGATORY NO. 11

Identify all the different ways in which Respondent has ever boxed, packaged or sold its MOMBACHO cigars in the U.S.

ANSWER NO. 11

11. The products are sold in boxes

INTERROGATORY NO. 12

Identify Respondent's total approximate sales of MOMBACHO cigars in the U.S., by dollars and units, for each year from 2004 to the present date.

ANSWER NO. 12

	<u>Year</u>	<u>Boxes sold</u>	<u>Sales\$</u>
12.	2004	100	6,500
	2005	255	12,811
	2006	766	41,311
	2007	321	11,490
	2008	71	4,196
	2009	88	5,787
	2010	103	6,593
	2011	75	5,789
	2012	6	450
	2013	5	310
	2014	2	231
	2015	28	1,416
	2016	300	10,500

INTERROGATORY NO. 13

Identify the price or prices at which Respondent has sold MOMBACHO cigars in the U.S. for each year from 2004 to date.

ANSWER NO .13

13. Wholesale price is \$60.00-\$80.00/box

INTERROGATORY NO. 14

Identify each and every different way that Respondent has ever advertised, marketed and promoted MOMBACHO cigars in the U.S.

ANSWER NO. 14

14. Websites, industry magazines and industry blogs and at the IPCPR (retail tobacco dealers annual convention)

INTERROGATORY NO. 15

Identify all materials ever used by respondent to advertise, market and promote MOMBACHO cigars in the U.S.

ANSWER NO. 15

15. Websites (tabacaleratropica.coml and now casaferenandezcigars.com), industry magazines (Cigar Aficionado) and industry blogs (Half wheel) --no physical copies were retained

INTERROGATORY NO. 16

Identify the amount of money spent by Respondent in advertising, marketing and promoting its MOMBACHO cigars in the U.S. by year from 2004 to present date.

ANSWER NO. 16

16. The product is marketed with other brands and it is impossible to separate the cost

INTERROGATORY NO. 17

Identify any years when Respondent has not sold MOMBACHO cigars in the U.S.

ANSWER NO. 17

17. None

INTERROGATORY NO. 18

Identify each and every distributor, wholesaler and retailer in the U.S. who has ever purchased MOMBACHO cigars from Respondent.

ANSWER NO. 18

18. The question is objected to as being vague and overbroad. Serious Cigars, LLC of 6608 Cypress Creek Parkway, Houston, TX 77069 is a representative current retailer of the brand. No detailed records were kept.

INTERROGATORY NO. 19

Identify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars.

ANSWER NO. 19

19. Entire U.S.A. (Texas, Florida, New York, New Jersey)

INTERROGATORY NO. 20

Identify Respondent's inventory of MOMBACHO cigars as of October 22, 2015.

ANSWER NO. 20

20. 300 boxes (NOW SOLD)

INTERROGATORY NO. 21

Identify all ring labels, box labels and other labels ever used by Respondent for its MOMBACHO cigars.

ANSWER NO. 21

21. See attached Exhibit A

INTERROGATORY NO. 22

Identify all changes made to the website at www.casadefernandez.com since October 22, 2015.

ANSWER NO. 22

22. None

INTERROGATORY NO. 23

Identify the addresses of all internet websites ever used by Respondent to advertise, market, promote and sell its MOMBACHO cigars in the U.S.

ANSWER NO. 23

23. www.tabacaleratropical.com and www.casadefernandez.com

INTERROGATORY NO. 24

Identify all ratings and awards ever received by or for Respondent's MOMBACHO cigars.

ANSWER NO. 24

24. Rated '88-'92 by Cigar Aficionado magazine (see attached Exhibit C)

INTERROGATORY NO. 25

Identify all contracts, agreements, consents, undertakings, assignments or licenses referring or relating to the mark MOMBACHO

ANSWER NO. 25

25. None

INTERROGATORY NO. 26

Identify each and every document and tangible thing referred to in the categories identified in section B of Respondent's Rule 26(a)(1) Initial Disclosures.

ANSWER NO. 26

26. Exhibit A labels

Exhibit B Half Wheel article

INTERROGATORY NO. 27

Identify the person or persons most knowledgeable about the facts alleged in Respondent's Answer to Petitioner's Petition for Cancellation.

ANSWER NO. 27

27. Paul Palmer
310 NW 79th Avenue
Miami, Florida 33122

INTERROGATORY NO. 28

Identify all witnesses whose testimony Respondent intends or expects to rely on at trial in this proceeding.

ANSWER NO. 28

28. Paul Palmer
310 NW 79th Avenue
Miami, Florida 33122

INTERROGATORY NO. 29

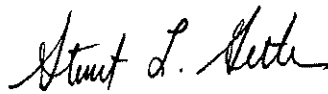
Identify all person(s) who provided information in response to any Interrogatory served by Petitioner in this matter and, for each person identified, identify the corresponding interrogatory and list the responsive information provided by the person.

ANSWER NO. 29

29. Paul Palmer
310 NW 79th Avenue
Miami, Florida 33122

Respondent reserves the right to rely on any documents disclosed by Petitioner during discovery and any additional documents that might be located during discovery. Respondent also reserves the right to supplement these disclosures as other documents become relevant based on Petitioner's initial and subsequent disclosures and discovery responses and/or any documents or information that are developed or revealed as discovery continues in this matter.

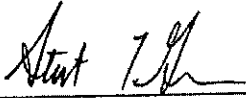
Respectfully submitted,

By: 
Stewart L. Gitler
Howard N. Flaxman John L. Welsh
WELSH FLAXMAN & GITLER LLC
2000 Duke Street, Suite 100
(703)920-1122
mail@iplawsolutions.com
ATTORNEYS FOR RESPONDENT

Date: 6/13/2016

VERIFICATION

Stewart L. Gitler being duly sworn, deposes and says that I represent the Respondent in this action, that I have read the foregoing answers to interrogatories and know the contents thereof, and the same are true to my knowledge, information and belief.


By: 
Stewart L. Gitler
Howard N. Flaxman John L. Welsh
WELSH FLAXMAN & GITLER LLC
2000 Duke Street, Suite 100
(703)920-1122
mail@iplawsolutions.com
ATTORNEYS FOR RESPONDENT

Date: 6/13/2016

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing RESPONDENT'S
2nd RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES TO
RESPONDENT, was served on Counsel for Petitioner, by U.S. first-class mail, postage prepaid,
6/13, 2016, to:

Peter S. Sloane
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601

By: 
Stewart L. Gitler

) Cancellation No. 92062543

To the best of Respondent's knowledge, information and belief, formed after reasonable inquiry, its responses are complete and correct as of the time they are made. Respondent reserves the right to amend and/or supplement its responses as pertinent facts become known in the future, as contemplated by FRCP 26(e).

REQUEST NO. 1

All documents and things referring or relating to Respondent's selection and adoption of the mark MOMBACHO for cigars.

ANSWER TO REQUEST NO. 1

None

REQUEST NO. 2

Documents and things sufficient to identify each different type and brand of MOMBACHO cigar ever sold or distributed by Respondent in the U.S.

ANSWER TO REQUEST NO. 2

None

REQUEST NO. 3

All documents and things referring or relating to Respondent's first use of the mark MOMBACHO for cigars in U.S. commerce and interstate commerce.

ANSWER TO REQUEST NO. 3

None

REQUEST NO. 4

All documents and things referring or relating to Respondent's current use of the mark MOMBACHO for cigars.

ANSWER TO REQUEST NO. 4

See Exhibits A and B

REQUEST NO. 5

Documents and things sufficient to identify all the different ways in which Respondent's current use of the mark MOMBACHO for cigars in the U.S.

ANSWER TO REQUEST NO. 5

None

REQUEST NO. 6

Documents and things sufficient to identify Respondent's total annual sales of MOMBACHO cigars in the U.S., by dollars and units, for each year from 2004 to the present date.

ANSWER TO REQUEST NO. 6

None

REQUEST NO. 7

Documents and things sufficient to identify the price or prices at which Respondent has sold MOMBACHO cigars in the U.S. for each year from 2004 to the present date.

ANSWER TO REQUEST NO. 7

None

REQUEST NO. 8

Documents and things sufficient to identify each and every different medium in which Respondent has ever advertised, marketed or promoted its MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 8

None

REQUEST NO. 9

Examples of all materials and things ever used by Respondent to advertise, market and promote its MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 9

None

REQUEST NO. 10

Documents and things sufficient to identify all the total amount of money spent in

advertising, marketing or promoting its MOMBACHO cigars in the U.S. for each years from 2004 to the present date.

ANSWER TO REQUEST NO. 10

None

REQUEST NO. 11

All documents and things referring or relating to any years when Respondent did not sell MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 11

None

REQUEST NO. 12

Documents and things sufficient to identify all distributors, wholesalers and retailers in the U.S. that ever purchased MOMBACHO cigars from Respondent

ANSWER TO REQUEST NO. 12

None

REQUEST NO. 13

Documents and things sufficient to identify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars

ANSWER TO REQUEST NO. 13

None

REQUEST NO. 14

All documents and things referring or relating to Respondent's inventory of MOMBACHO cigars as of October 22, 2015

ANSWER TO REQUEST NO. 14

None

REQUEST NO. 15

Examples of each different kind of ring label, box label and other label ever used by Respondent for its MOMBACHO cigars

ANSWER TO REQUEST NO. 15

See Exhibit A

REQUEST NO. 16

All documents and things referring or relating to each and every change made to the website at www.casadefernandez.com since October 22, 2015

ANSWER TO REQUEST NO. 16

None

REQUEST NO. 17

Printouts of internet webpages ever used by Respondent to advertise, market, promote and sell its MOMBACHO cigars in the U.S.

ANSWER TO REQUEST NO. 17

None

REQUEST NO. 18

Documents and things sufficient to identify all ratings and awards ever received by or for Respondent's MOMBACHO cigars

ANSWER TO REQUEST NO. 18

See Cigar Aficionado magazine's website for past ratings, no copies were retained-we recommend that you search the magazine's archives

REQUEST NO. 19

All contracts, agreements, consents, undertakings, assignments or licenses referring or relating to the mark MOMBACHO

ANSWER TO REQUEST NO. 19

None

REQUEST NO. 20

All marketing and business plans for Respondent's MOMBACHO cigars from 2004 to the present date

ANSWER TO REQUEST NO. 20

None

REQUEST NO. 21

All documents and things referring or relating to the decision to file, and the filing of, the application that matured into the Registration.

ANSWER TO REQUEST NO. 21

See www.uspto.gov for a copy of the application prosecution file, no other documents currently exist.

REQUEST NO. 22

All documents and things referring or relating to Petitioner.

ANSWER TO REQUEST NO. 22

None

REQUEST NO. 23

Each and every document and tangible thing referred to in the categories identified in Section B of Respondent's Rule 26(a)(1) Initial Disclosures.

ANSWER TO REQUEST NO. 23

None

REQUEST NO. 24

All documents and things, other than those produced in response to the foregoing Requests, on which Respondent intends to rely in connection with this proceeding.

ANSWER TO REQUEST NO. 24

Nothing known as of the date of this response.

REQUEST NO. 25

All documents and things not otherwise produced in response to any of the foregoing requests which are identified in Respondent's Responses to Petitioner's First Set of Interrogatories to Respondent which are served simultaneously herewith (and/or which were relied upon in preparing Respondent's interrogatory responses)

ANSWER TO REQUEST NO. 25

None known as of the date of this response.

Respondent reserves the right to rely on any documents disclosed by Petitioner during discovery and any additional documents that might be located during discovery. Respondent also reserves the right to supplement these disclosures as other documents become relevant based on Petitioner's initial and subsequent disclosures and discovery responses and/or any documents or information that are developed or revealed as discovery continues in this matter.

Respectfully submitted,

By: 

Stewart L. Gitler

Howard N. Flaxman

John L. Welsh

WELSH FLAXMAN & GITLER LLC

2000 Duke Street, Suite 100

(703)920-1122

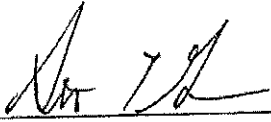
mail@iplawsolutions.com

ATTORNEYS FOR RESPONDENT

Date: 6/13/2016

VERIFICATION

Stewart L. Gitler being duly sworn, deposes and says that I represent the Respondent in this action, that I have read the foregoing 2nd answers to the request for production of documents and know the contents thereof, and the same are true to my knowledge, information and belief.

By: 
Stewart L. Gitler
Howard N. Flaxman John L. Welsh
WELSH FLAXMAN & GITLER LLC
2000 Duke Street, Suite 100
(703)920-1122
mail@iplawsolutions.com
ATTORNEYS FOR RESPONDENT

Date: 6/13/16

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing RESPONDENT'S, 2nd RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS was served on Counsel for Petitioner, by U.S. first-class mail, postage prepaid, 6/13, 2016, to:

Peter S. Sloane
LEASON ELLIS LLP
One Barker Avenue, Fifth Floor
White Plains, New York 10601

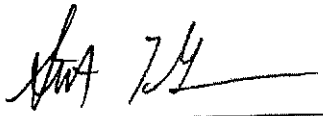
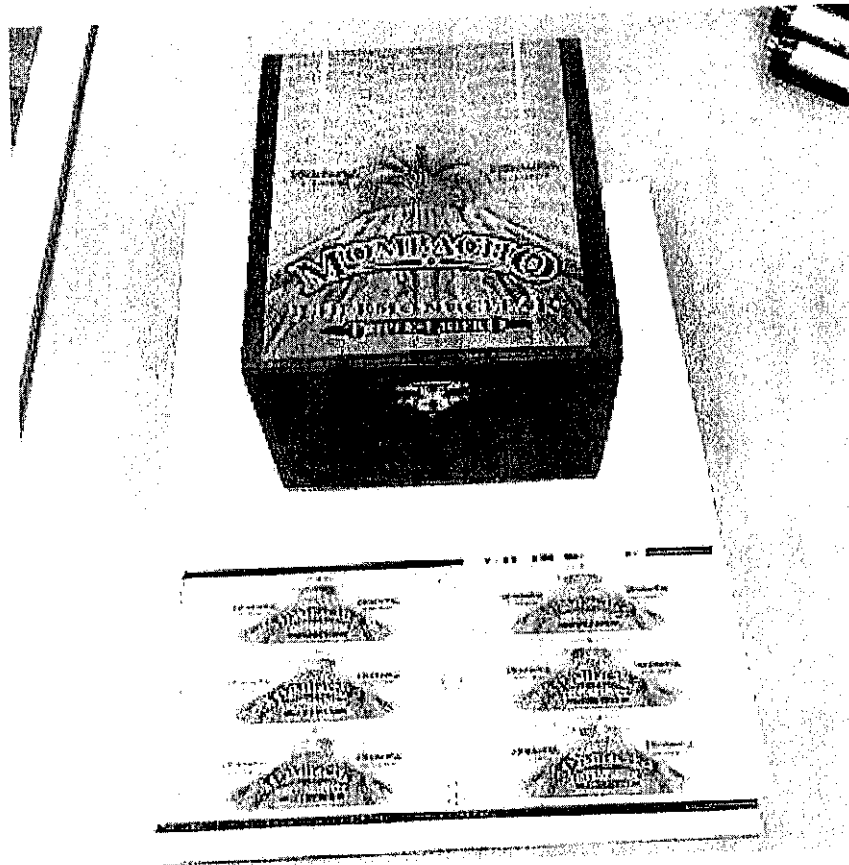
By: 
Stewart L. Gitler

EXHIBIT A



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NEWS

MOMBACHO MIAMI BECOMES SERIOUS CIGARS EXCLUSIVE

By Charlie Minato @charlieminato · On April 19, 2016

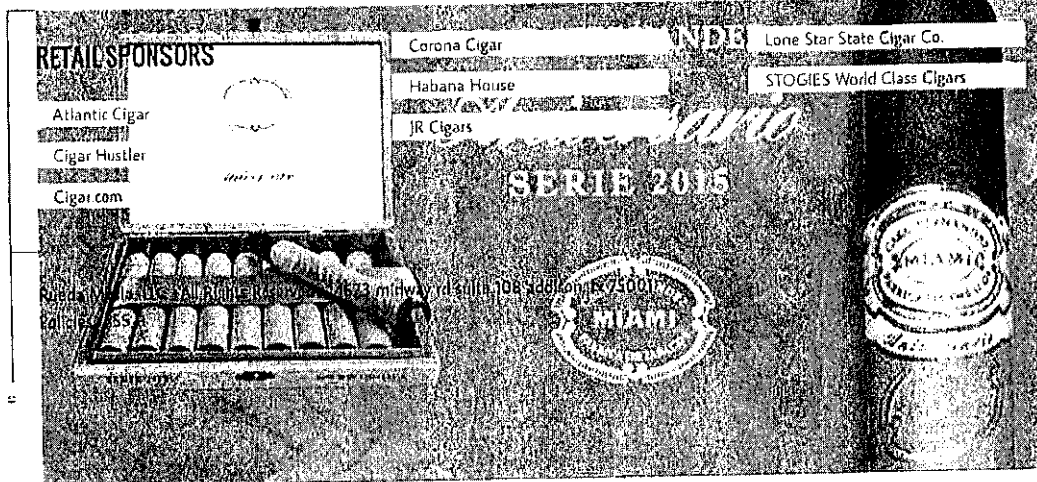
You've likely heard of Mombacho, but probably not this Mombacho.

As has been mentioned in nearly every post on this website regarding Mombacho Cigars S.A., the company sells its cigars branded as Tierra Volcán in the U.S. because of a trademark issue.

EXHIBIT B

HOME NEWS REVIEWS REVIEW LIST 2016 RELEASE LIST IPCPR FDA LEGISLATION MISCELLANEOUS ABOUT US

f t g+ | Q

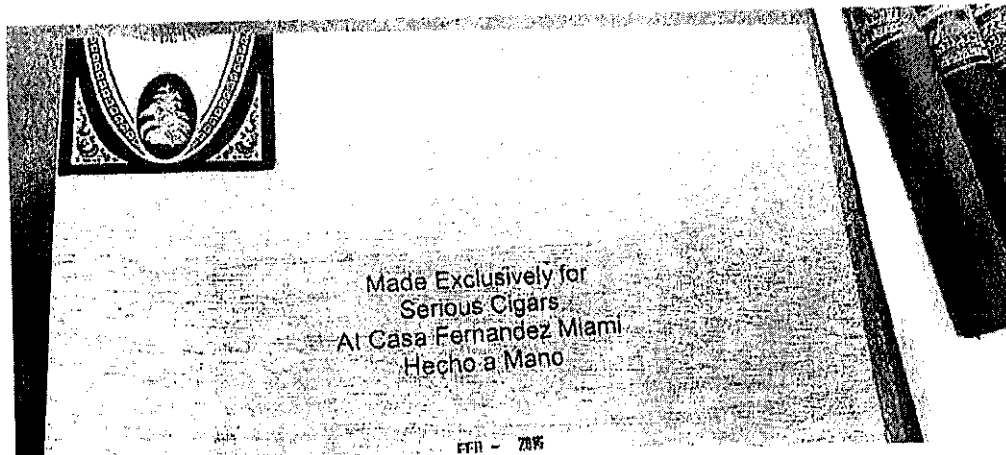


While it can sell cigars under the Mombacho name in every other country, in the U.S., only Casa Fernández can sell cigars called Mombacho.



The company, when it was previously known as Tabacalera Tropical, produced the cigar under the name Mombacho Thermonuclear Series 2006. Now that blend is back with a new name, new factory and new home.

The Mombacho Miami uses the same all Nicaraguan blend as the original cigar, but it is now being made at Casa Fernández Miami—instead of in Nicaragua—and is an exclusive to Serious Cigars of Houston, Texas.



TABAQUERO
-HAMLET PAREDES-

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It's offered in three sizes: Belicoso (6 1/4 x 54, \$9.95), Corona Gorda (6 1/2 x 52, \$9.90) and Robusto (5 x 54, \$9.15). Each size is offered in boxes of 10, instead of the 15-count boxes the company used to use for Mombacho.

The cigars will go on sale Saturday at Serious Cigars' Texas Cigar Festival.



Mombacho Cigars Launching 10-Count Boxes
Starting in June (11/11/16)
by Nino



Mombacho Cigars to Launch 10-Count Boxes
Starting in June (11/11/16)
by Nino



Mombacho Cigars SA - Serious Cigars
Master
by Nino



CASA FERNÁNDEZ CASA FERNÁNDEZ MIAMI MOMBACHO MIAMI MOMBACHO SERIOUS CIGARS

TEXAS CIGAR FESTIVAL (2016)

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CHARLIE MINATO

I am an editor and co-founder of halfwheel.com/Rueda Media, LLC. I previously co-founded and published TheCigarFeed, one of the two predecessors of halfwheel. I handle the editing of our written content, the majority of the technical aspects of the site and work with the rest of our staff on content management, business development and more. I've lived in most corners of the country and now entering my second stint in Dallas, Texas. I enjoy boxing, headphones, the Le Mans 24-hour, wearing sweatshirts year-round and gyros, echte liebe.

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Victor Nicolás Resek • 10 years ago

A 52 RG as a corona gorda



charlie • 10 years ago

So is this a Mombacho (Tierra Volcan) brand or a Casa Fernandez brand?



Patrick Lagreid staff • 10 years ago

This is Casa Fernandez's; they have the rights to the word Mombacho in the United States and produced a line called Mombacho several years ago, which is now a store exclusive to Serious Cigars as mentioned above.

Reply Quote

Menu

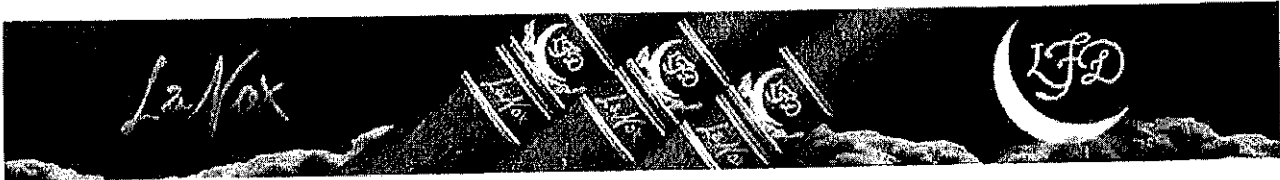
EXH. C.

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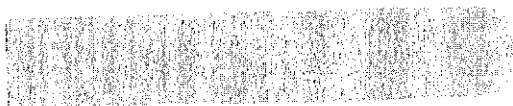


5 cigars found

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	/recall	
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Cigar ↑ (/Cigars/search/recall/yes/page/1/sort_by	/sort_dir	/yes/page/1/sort_by/country
/brand_name/sort_dir/default)	/default)	/sort_dir/default)
		Price

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 (/Cigars
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 /recall
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Mombacho Robusto (/cigars/detail/source/search/note_id/11207)



88
POINTS

Nicaragua

\$5.90

Cigar Aficionado • Issue Date: October 1, 2006
 Size: Robusto • Body: Full

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Tasting note>> (/cigars/detail/source/search/note_id/11207)

Mombacho Belicoso (/cigars/detail/source/search/note_id/11090)



89
POINTS

Nicaragua

\$6.50

Cigar Aficionado • Issue Date: August 1, 2006
 Size: Figurado • Body: Full

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Tasting note>> (/cigars/detail/source/search/note_id/11090)

Mombacho Belicoso (/cigars/detail/source/search/note_id/11001)



92
POINTS

Nicaragua

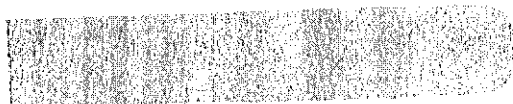
\$6.50

Cigar Insider • Issue Date: March 7, 2006 Size:
 Figurado • Body: Full

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Tasting note>> (/cigars/detail/source/search/note_id/11001)

Mombacho Corona Grande (/cigars/detail/source/search/note_id/11002)



88
POINTS

Nicaragua

\$6.30

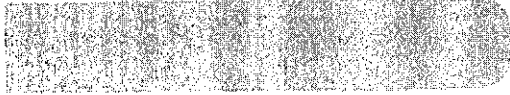
Cigar Insider • Issue Date: March 7, 2006 Size:
 Corona Gorda • Body: Full

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Tasting note>> (/cigars/detail/source/search/note_id/11002)

Score ↑
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 /default) /sort_dir/default) Price
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 /brand_name/sort_dir/default)

Mombacho Robusto (/cigars/detail/source/search/note_id/11003)



88
POINTS

Nicaragua

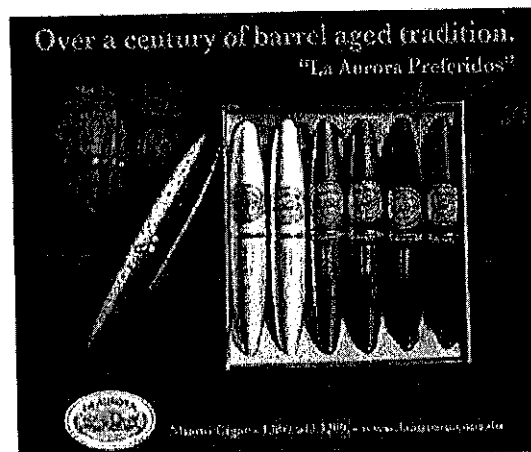
\$5.90

Cigar Insider • Issue Date: March 7, 2006 Size:
Robusto • Body: Full

(/cigars/detail/source/search/note_id/11003)

Tasting note>> (/cigars/detail/source/search/note_id/11003)

5 cigars found





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Wine Spectator (<http://www.winespectator.com/>) / Whisky Advocate (<http://whiskyadvocate.com/>) / Market Watch (<http://marketwatchmag.com/>) / Impact / Impact Databank (http://staging.winespectator.com/display/show?id=impact_databank_report) / Shanken News Daily (<http://www.shankennewsdaily.com/>)

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Exhibit D

May 28, 2016

VIA E-MAIL
sgitler@iplawsolutions.com

Stewart Gitler, Esq.
Welsh Flaxman & Gitler LLC
2000 Duke Street, Suite 100
Alexandria, Virginia 22314

RE: *Mombacho Cigars S.A. v. Tropical Tobacco, Inc.*, Cancellation No.
92062543

Dear Stewart:

I write regarding Tropical Tobacco's Responses to Mombacho Cigars' First Set of Interrogatories and First Set of Requests for Production of Documents and Things. As discussed in detail below, these Responses are deficient and require supplementation.

Interrogatories

Interrogatory No. 1 asks Tropical Tobacco to "[d]escribe the business of Respondent and identify all names under which it has ever done business." While Tropical Tobacco's answer provides various names, it fails to "describe the business of Respondent."

Interrogatory No. 10 asks Tropical Tobacco to "[d]escribe the circumstances under which Respondent's MOMBACHO cigars were first sold or distributed in the U.S." Tropical Tobacco responds only that "[t]he products were first sold to consumers directly." Such a response does not fully describe the circumstances under which Tropical Tobacco first sold or distributed MOMBACHO cigars. It fails to identify how the sales were made (e.g. through direct contact by consumer, sales in a store), who the customers were that bought the product, what products were sold, when the sales occurred and where such customers were located.

Interrogatory No. 12 asks Tropical Tobacco to "[i]dentify Respondent's total sales of MOMBACHO cigars in the U.S., by dollars . . . for each year from 2004 to the present date." Tropical Tobacco objects that the dollars of cigars sold is confidential and beyond the scope of the proceeding. As you know, the Trademark Trial and Appeal Board's standard protective order is applicable during discovery in all cancellation proceedings such as here. *See* 37 CFR § 2.116(g). Furthermore, annual sales for a party's involved goods under its involved mark is a proper matter for discovery. *See* TBMP § 414.

Stewart Gitler, Esq.

May 28, 2016

Page 2

Interrogatory No. 15 asks Tropical Tobacco to “[i]dentify all materials ever used by respondent to advertise, market and promote MOMBACHO cigars in the U.S.” Tropical Tobacco’s response merely repeats its response to Interrogatory No. 14, which asks a different and more general question. Interrogatory No. 15, on the other hand, requires Tropical Tobacco to specifically identify any such websites, industry magazines or industry blogs in which it has advertised, marketed, or promoted its MOMBACHO cigars in the U.S. Identification of general categories of advertising or marketing materials is insufficient.

Interrogatory No. 18 asks Tropical Tobacco to “[i]dentify each and every distributor, wholesaler and retailer in the U.S. who has ever purchased MOMBACHO cigars from Respondent.” Tropical Tobacco’s response only vaguely identifies a “representative current retailer of the brand.” Tropical Tobacco must identify every distributor, wholesaler or retailer to whom it has ever sold any of its MOMBACHO cigars to in the U.S.

Interrogatory No. 19 asks Tropical Tobacco to “[i]dentify all geographic areas in the U.S. where Respondent has ever sold or distributed its MOMBACHO cigars.” Tropical Tobacco must respond by identifying at least specific states. *See Georgia-Pacific Corp. v. Great Plains Bag Co.*, 190 USPQ 193, 196 (TTAB 1976) (petitioner was required to list all states to which its goods were shipped).

Interrogatory No. 23 asks Tropical Tobacco to “[i]dentify the addresses of all internet websites ever used by Respondent to advertise, market, promote and sell its MOMBACHO cigars in the U.S.” Please clarify what the phrase “at times” refers to in Tropical Tobacco’s response.

Tropical Tobacco’s interrogatory responses fail to include a verification, which is required by the Federal Rules of Civil Procedure. *See* Fed. R. Civ. P. 33(b)(5).

Requests for Production of Documents and Things

Request for Production No. 18 requests “[d]ocuments and things sufficient to identify all ratings and awards ever received by or for Respondent’s MOMBACHO cigars.” Tropical Tobacco identifies “Cigar Aficionado magazine’s website.” Tropical Tobacco must produce any such pages from Cigar Aficionado magazine’s website that it contends shows any ratings or awards for its MOMBACHO cigars.

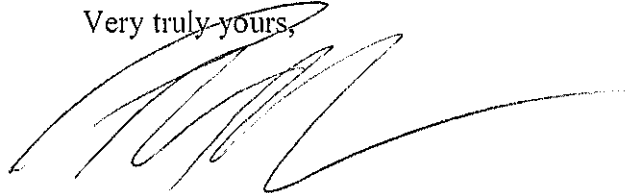
Request for Production No. 21 asks for “[a]ll documents and things relating to the decision to file, and the filing of, the application that matured into the Registration.” Tropical Tobacco merely directed Petitioner to see the USPTO website a copy of the application prosecution file. This is non-responsive and Tropical Tobacco must identify whether any other responsive documents exist.

Stewart Gitler, Esq.
May 28, 2016
Page 3

We intend to inspect the box shown in Exhibit A as well as the alleged current inventory of product. Please let me know a convenient date for us to do so.

We request supplementation of the aforementioned discovery requests no later than June 6, 2016.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', written over the closing 'Very truly yours,'.

Peter S. Sloane

cc: Lauren Sabol, Esq.

Exhibit E

From: [Peter S. Sloane](#)
To: [Stewart Gitler](#)
Cc: [Lauren B. Sabol](#); [Howard Flaxman](#); [John Welsh](#)
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543
Date: Thursday, June 23, 2016 10:34:33 AM

Stewart:

That does not appear to be correct. Response to Interrogatory No. 14 now identifies the IPCPR. It did not previously and we did not object to the sufficiency of that response. Please let me know what other changes your client has made that were not raised in our deficiency letter.

Regards,

Peter.

From: Stewart Gitler [<mailto:sgitler@iplawsolutions.com>]
Sent: Wednesday, June 22, 2016 2:21 PM
To: Peter S. Sloane
Cc: Lauren B. Sabol; Howard Flaxman; John Welsh
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Peter:

We modified the answers to the interrogatories that you objected to and added the verifications.

I will speak with my client's about availability for the discovery depositions you would like to take.

Stewart

Stewart L. Gitler, Esq.
Welsh Flaxman & Gitler LLC
2000 Duke Street
Suite 100
Alexandria, VA 22314

703-920-1122
703-920-3399 (fax)
email gitler@iplawsolutions.com

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From: Peter S. Sloane [<mailto:Sloane@leasonellis.com>]
Sent: Wednesday, June 22, 2016 11:19 AM
To: Stewart Gitler
Cc: Lauren B. Sabol; Howard Flaxman; John Welsh
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543
Importance: High

Stewart:

We received your letter dated June 13, 2016 with your client's "second" response to our first interrogatories. It is unclear whether your client is correcting or supplementing its earlier response. Can you please let me know what was changed in response to my letter of May 28, 2016?

I appreciate your client providing dates for the inspection of product, but we are not available this week. I will revert to you with proposed dates shortly.

Attached are courtesy copies of our second set of discovery requests. The service copies follow by first-class mail.

Discovery is set to close on July 8, 2016. Please confirm that you are amenable to a two-month extension of time.

If you are not agreeable to extending the discovery and trial dates, please let me know when Paul Palmer and Josefa Vega are available for deposition between now and the current deadline. We should also discuss a mutually convenient place for us to take their depositions.

Regards,

Peter.

From: Stewart Gitler [<mailto:sgitler@iplawsolutions.com>]
Sent: Sunday, May 29, 2016 11:38 AM
To: Peter S. Sloane
Cc: Lauren B. Sabol
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Peter:

Safely received-Applicant will review the letter and discuss same with client then will provide answers timely-the client will not be available next week but will provide answers to the further clarifications by the middle of the month of June.

Stewart

From: Peter S. Sloane [Sloane@leasonellis.com]
Sent: Saturday, May 28, 2016 3:30 PM
To: Stewart Gitler
Cc: Lauren B. Sabol
Subject: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Stewart:

Please see the attached correspondence.

Regards,

Peter S. Sloane

LEASON ELLIS.

One Barker Avenue, Fifth Floor

White Plains, New York 10601

Sloane@LeasonEllis.com

T. 914.821.9073

C. 914.419.6159

F. 914.288.0023

Skype: sloane.leasonellis

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Exhibit F

From: Peter S. Sloane
To: Stewart Gitler
Cc: Lauren B. Sabol; Cameron Reuber
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543
Date: Friday, June 24, 2016 12:28:41 PM

Stewart:

I just left you a voice mail. As discussed, since we have not heard back from you following our e-mail below, we will move forward with filing our motion to compel and motion to extend. Just in case our motion is not granted in time, we will separately be serving deposition notices, so please keep Mr. Palmer and Ms. Vega available from July 6th through 8th for depositions.

Regards,

Peter.

From: Peter S. Sloane
Sent: Thursday, June 23, 2016 4:29 PM
To: 'Stewart Gitler'
Cc: Lauren B. Sabol; Cameron Reuber
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Stewart:

With all due respect, you have only answered my e-mail in part. The issue is not just deficiencies with your client's discovery responses. The more pressing issue is your unwillingness to consent to extend the discovery period. I have already provided you with several reasons why we are entitled to obtain additional discovery before taking depositions of not just your client, but also any third parties such as Serious Cigars. The case law supports our position. *See, e.g., Neville Chemical Company v. The Lubrizol Corporation*, 184 U.S.P.Q. 689 (TTAB 1975) (granting applicant's motion to extend where opposer's objections to interrogatories substantially delayed applicant's receipt of information and the opportunity to take depositions based upon such information). The motion to extend in *Neville* was granted in a case that had already been pending for two years. This is the first extension we have sought. It seems unlikely that your client can claim any meaningful prejudice by a two-month extension of time.

Regards,

Peter.

From: Stewart Gitler [<mailto:sgitler@iplawsolutions.com>]
Sent: Thursday, June 23, 2016 2:36 PM
To: Peter S. Sloane
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Peter:

I am not really sure what you are arguing here? I responded to the interrogatories-and to the one's you believed they were deficient;

I attempted to resolve the all the deficiency issues and sent you the revised answers. I note you have an issue with the answer to interrogatory 18 and I will contact my client again and see if he can produce additional names of the entities that you are requesting.

Please note that I will contest any "contempt" motion you will file on the grounds that I have refused to reply to your requests.

We are attempting to comply and will comply to the best of our client's ability.

Stewart

Stewart L. Gitler, Esq.
Welsh Flaxman & Gitler LLC
2000 Duke Street
Suite 100
Alexandria, VA 22314

703-920-1122
703-920-3399 (fax)
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From: Peter S. Sloane [<mailto:Sloane@leasonellis.com>]
Sent: Thursday, June 23, 2016 2:23 PM
To: Stewart Gitler
Cc: Lauren B. Sabol; Howard Flaxman; John Welsh
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Stewart:

That you responded to our letter does not abrogate the fact that our letter would not have been necessary but for your client's failure to properly respond to our discovery requests in the first instance. A party which receives discovery requests early in the discovery period may not, by delaying its response thereto, or by responding improperly so that its adversary is forced to file a motion to compel discovery, deprive its adversary of the opportunity to take "follow-up" discovery. TBMP §403.04.

As previously discussed, we are not even sure what changes were made in Respondent's "second" response to our initial discovery requests. Among possibly other things, your client alleges

promotion of its product at IPCPR. Are you suggesting that we are not entitled to obtain discovery on that promotion prior to deposition? That would seem unfair.

We are also quite clearly entitled to discovery on your verification of the interrogatory responses. An attorney who answers interrogatories on behalf of a corporation may thereafter be exposed to additional discovery and possibly even disqualification. TBMP §405.04(c).

As for continued deficiencies in your client's discovery responses, to take just one example, our Interrogatory No. 18 asked your client to identify each and every distributor and retailer in the U.S. who has ever purchased its MOMBACHO cigars. The first answer just identified Serious Cigars as a representative current retailer. We objected, whereupon Respondent's further response only added that no detailed records were kept in relation to other distributors or retailers. That is non-responsive as our interrogatory asked for names rather than documents.

In view of the above, we ask that you reconsider your refusal to consent to the requested extension of time. If your client is truly worried about unnecessary delay, it should avoid forcing us to file a motion for contempt which may end up delaying proceedings more than the requested two months.

Regards,

Peter.

From: Stewart Gitler [<mailto:sgitler@iplawsolutions.com>]
Sent: Thursday, June 23, 2016 1:54 PM
To: Peter S. Sloane
Cc: Lauren B. Sabol; Howard Flaxman; John Welsh
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Peter:

Our client does not agree to an extension of the time and we did respond to your purported "deficiency" letter. There is no requirement to respond to the second set of Ints/Doc request before the end of the discovery dates.

You have had adequate time to set time for a deposition and we will not agree to an extension, you have almost two weeks' notice and three possible dates you can choose for a deposition.

I'm not sure what motion to compel you will be filing? We did not contest your follow up letter and we tried to respond fully with your first set of interrogatories? What other deficiencies you contend exist?

We will contest any motion to extend the discovery dates as unnecessary delay.

Stewart
Stewart L. Gitler, Esq.
Welsh Flaxman & Gitler LLC
2000 Duke Street

Suite 100
Alexandria, VA 22314

703-920-1122
703-920-3399 (fax)
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From: Peter S. Sloane [<mailto:Sloane@leasonellis.com>]
Sent: Thursday, June 23, 2016 12:26 PM
To: Stewart Gitler
Cc: Lauren B. Sabol; Howard Flaxman; John Welsh
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543
Importance: High

Stewart:

Thanks for the depositions dates. You are putting us in an unnecessarily difficult position, though, by denying our reasonable request to extend dates. Among other things, the July 4th holiday is coming up and I am in San Francisco from June 30th through July 5, we have will not have received your responses to our second set of discovery requests by the time of deposition, there are still some deficiencies in your client's responses to our first set of discovery requests, and the delay in responding to our objections has adversely affected our ability to take follow up discovery. We would like to avoid filing a motion to compel and a motion to extend without consent. Accordingly, I ask that you kindly agree to consent to the requested extension of time. Given the upcoming deadline, I look forward to hearing from you by the end of today.

Regards,

Peter.

From: Stewart Gitler [<mailto:sgitler@iplawsolutions.com>]
Sent: Thursday, June 23, 2016 10:31 AM
To: Peter S. Sloane
Cc: Lauren B. Sabol; Howard Flaxman; John Welsh
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Dear Peter;

Mr. Palmer and Ms. Vega are available on July 6, 7 or 8 for depositions. The location for the deposition will need to be in Miami and at the same time you can inspect the items you would like to view.

We **will not agree** to any extensions of time for the discovery period.

Let me know.

Stewart

Stewart L. Gitler, Esq.
Welsh Flaxman & Gitler LLC
2000 Duke Street
Suite 100
Alexandria, VA 22314

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From: Peter S. Sloane [<mailto:Sloane@leasonellis.com>]
Sent: Wednesday, June 22, 2016 11:19 AM
To: Stewart Gitler
Cc: Lauren B. Sabol; Howard Flaxman; John Welsh
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543
Importance: High

Stewart:

We received your letter dated June 13, 2016 with your client's "second" response to our first interrogatories. It is unclear whether your client is correcting or supplementing its earlier response. Can you please let me know what was changed in response to my letter of May 28, 2016?

I appreciate your client providing dates for the inspection of product, but we are not available this week. I will revert to you with proposed dates shortly.

Attached are courtesy copies of our second set of discovery requests. The service copies follow by first-class mail.

Discovery is set to close on July 8, 2016. Please confirm that you are amenable to a two-month extension of time.

If you are not agreeable to extending the discovery and trial dates, please let me know when Paul

Palmer and Josefa Vega are available for deposition between now and the current deadline. We should also discuss a mutually convenient place for us to take their depositions.

Regards,

Peter.

From: Stewart Gitler [<mailto:sgitler@iplawsolutions.com>]
Sent: Sunday, May 29, 2016 11:38 AM
To: Peter S. Sloane
Cc: Lauren B. Sabol
Subject: RE: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Peter:

Safely received-Applicant will review the letter and discuss same with client then will provide answers timely-the client will not be available next week but will provide answers to the further clarifications by the middle of the month of June.

Stewart

From: Peter S. Sloane [Sloane@leasonellis.com]
Sent: Saturday, May 28, 2016 3:30 PM
To: Stewart Gitler
Cc: Lauren B. Sabol
Subject: Mombacho Cigars S.A. v. Tropical Tobacco, Inc., Cancellation No. 92062543

Stewart:

Please see the attached correspondence.

Regards,

Peter S. Sloane
LEASON ELLIS.
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White Plains, New York 10601
Sloane@LeasonEllis.com
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C. 914.419.6159
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